

Circuit Court for Baltimore County
Case No. 03-K-07-005653

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1914

September Term, 2022

AARON VICTOR SEIVERS

v.

STATE OF MARYLAND

Berger,
Shaw,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 1, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This case is before us on appeal from an order of the Circuit Court for Baltimore County denying a petition for writ of error coram nobis filed by appellant, Aaron Victor Seivers (“Seivers”). On appeal, Seivers presents three questions for our review, which we have rephrased and consolidated into a single question as follows:¹

Whether the circuit court erred in denying Seivers’s petition for writ of error coram nobis.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

We set out the facts of this case in our opinion filed October 6, 2010 affirming Seivers’s conviction on direct appeal.² We adopt that statement of facts and restate the most relevant facts here.

Incident Leading to Indictment

On October 28, 2007, between approximately 6:20 and 6:25 a.m., a man entered the McDonald’s located at 2107 East Joppa Road in Parkville, Maryland and ordered a

¹ Seiver’s original questions presented read as follows:

1. Did the circuit court error in finding that appellant waived his right to coram nobis relief?
2. Did the circuit court error in denying appellant’s coram nobis petition because it is barred by laches?
3. Did the circuit court error in denying Appellant’s claim of ineffective assistance of counsel?

² *Seivers v. State*, No. 847, Sept. Term, 2009 (App. Ct. Md. Oct. 6, 2010) (unreported).

beverage. While McDonald's employee Mylaina Robertson prepared his order, the man produced a gun and ordered her and her colleagues to the backroom of the restaurant. These colleagues included Kevin Walker, Joseph Walker, and the manager on duty, Dwayne Perkins. In the backroom, the man demanded that Perkins open the safe located in the restaurant. Perkins complied and the man retrieved approximately \$1,080 from the safe, placing the money into a plastic bag and leaving the building through a side door. The employees at the McDonald's saw the man cross Joppa Road and turn down Clement Avenue.

Perkins called the police while Kevin Walker joined Robertson in her car to pursue the perpetrator. They drove down Clement Avenue and saw the perpetrator walking towards an apartment complex. Walker and Robertson drove down the street parallel to Clement Avenue, parked, and entered the apartment building. From inside the complex, they observed someone wearing the same clothes as the perpetrator enter the passenger side of a silver BMW. The man reclined his seat until he was no longer visible, and the BMW exited the apartment complex. Robertson and Walker returned to Robertson's car and followed the BMW. At one point during their pursuit of the car, Robertson was able to observe the individual driving the BMW, who she later identified to police to be Seivers.

Robertson and Walker returned to the McDonald's and spoke with the Baltimore County Police officers who responded to the scene – Officer Nancy Moroz and Detective Keith Lang. The officers identified the BMW as Seivers's vehicle and learned that Seivers was a trainee with the Baltimore City Police Department. Officer Moroz and Detective

Lang called Seivers to the Baltimore City Police Southern District Station for questioning. Detective Lang immediately recognized that Seivers did not match the perpetrator's description and informed Seivers that his vehicle had been implicated in a crime. During questioning, Seivers gave inconsistent answers as to his whereabouts during the time of the robbery. He first indicated he had been asleep at home during the robbery, and then asserted he had been at his girlfriend's apartment and getting gas at that time. Seivers also told the officers that he had been alone in his car that morning. The following day, the officers conducted a search of Seivers's vehicle pursuant to a warrant and retrieved a receipt confirming that Seivers made a transaction at the BP gas station on Joppa Road on the morning of the robbery at approximately 6:20 a.m.

On December 10, 2007, Seivers was indicted by a grand jury on charges of armed robbery, robbery, assault, theft, use of a handgun during a crime of violence, conspiracy to commit robbery and armed robbery, and accessory after the fact to armed robbery.

Trial, Motion for New Trial, and Appeal

Prior to trial, Seivers moved to suppress his statements to Detective Lang and Officer Moroz, asserting that they were made during a custodial interrogation without receiving proper *Miranda* warnings. The circuit court held a hearing on the matter on April 9, 2008 and denied Seivers's motion to suppress. Seivers's trial commenced the following day on April 10, 2008. The State proceeded on two counts of robbery, two counts of armed robbery, four counts of first-degree assault, and four counts of use of a handgun during a crime of violence, asserting that Seivers was guilty as an aider and abettor

of these crimes. The State also proceeded on one count of accessory after the fact to armed robbery.

At trial, Robertson identified Seivers as the individual driving the silver BMW on the morning of October 28, 2007. Additionally, multiple witnesses testified that the perpetrator's gun looked like a police officer's service weapon. This included the testimony of Detective Lang, who testified that Baltimore City police officers and trainees are each issued a Glock semi-automatic handgun and that surveillance photos of the robbery showed the perpetrator handling what "appear[ed] to be a Glock." Seivers moved for judgment of acquittal at the close of the State's case and after closing arguments. The court denied both motions. The jury found Seivers guilty of all charges except accessory after the fact. Thereafter, the court granted Seivers's request to postpone sentencing.

On or about April 22, 2008, Seivers's trial counsel withdrew from the case. Seivers's new counsel filed a motion for a new trial on April 22, 2008. The circuit court held a hearing on February 13, 2009 to consider Seivers's motion, during which Seivers raised multiple arguments that were not included in his motion. Because the State was unfamiliar with and unprepared to contest Seivers's new claims, the court granted the State's request for a continuance. The court reconvened on May 11, 2009. At the hearing, Seivers raised for the first time his argument that trial counsel was ineffective by failing to respond to alleged *Brady* and discovery violations in a timely manner. The circuit court held that this argument was not timely raised and denied Seivers's motion for a new trial,

concluding trial counsel had not rendered ineffective assistance falling below an objective standard of reasonableness.

The court then immediately proceeded with sentencing. Seivers received identical sentences for all counts: ten years of concurrent incarceration, the first five without the possibility of parole, with five years of each suspended and each sentence subject to two years of probation upon release. Seivers filed a notice of appeal on June 1, 2009. We affirmed Seivers's convictions on October 6, 2010.

Petition for Writ of Error Coram Nobis

On September 7, 2021, Seivers filed a petition for writ of error coram nobis, challenging his conviction based on ineffective assistance of counsel. He argued that trial counsel was ineffective by: (1) failing to object to an allegedly prejudicial *voir dire*; (2) failing to object to the court's reasonable doubt instruction; and (3) failing to address alleged *Brady* and discovery violations in a timely manner.³ The circuit court held a hearing on December 14, 2022 to consider Seivers's petition. At the hearing, the State argued that Seivers had waived his ineffective assistance of counsel claim based on counsel's failure to object to alleged *Brady* and discovery violations. The State contended that Seivers waived this claim by failing to pursue post-conviction relief and by failing to

³ On appeal, Seivers challenges the circuit court's denial of his petition solely on the basis of his last argument regarding trial counsel's failure to object to alleged *Brady* and discovery violations.

request a new trial under Maryland Rule 4-331.⁴ The State also asserted a defense of laches.

The circuit court rejected the State’s argument that failure to pursue post-conviction relief constitutes waiver, but ultimately concluded that Seivers had waived his ineffective assistance of counsel claim related to *Brady* and discovery violations. The court concluded that Seivers waived that claim by “his failure to pursue [that argument] in 2010 when he had the right to do that.” The circuit court also concluded that Seivers’s petition was barred by laches. Nevertheless, the court considered the merits of Seivers’s petition and concluded that Seivers failed to meet his burden to show that trial counsel rendered ineffective assistance of counsel. The court issued an oral ruling on December 14, 2022 denying Seivers’s petition, and an order was entered denying the petition on December 30, 2022 to that effect. This timely appeal followed.

DISCUSSION

I. Standard of Review

On appeal, Seivers contends the circuit court erred in denying his coram nobis petition. He asserts that trial counsel was ineffective by failing to address *Brady* and discovery violations in a timely manner, alleging that this prejudiced the defense and

⁴ Maryland Rule 4-331(c)(1) provides that a circuit court “may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule . . . on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief.”

deprived Seivers of due process. A writ of error coram nobis is an “equitable action originating in common law” whereby a petitioner seeks to collaterally challenge a conviction. *Coleman v. State*, 219 Md. App. 339, 354 (2014) (citing *Moguel v. State*, 184 Md. App. 465, 471 (2009)). It is “an ‘extraordinary remedy’ justified ‘only under circumstances *compelling such action to achieve justice.*’” *State v. Smith*, 443 Md. 572, 597 (2015) (quoting *Skok v. State*, 361 Md. 52, 72 (2000)) (emphasis in original). Coram nobis relief may be available for “a convicted person who is not incarcerated and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction” *Skok, supra*, 361 Md. at 78. This court reviews a circuit court’s decision to grant or deny coram nobis relief for abuse of discretion. *State v. Rich*, 454 Md. 448, 470–71 (2017). “[A]ppellate courts should not disturb the coram nobis court’s factual findings unless they are clearly erroneous” *Id.* We review the circuit court’s legal determinations *de novo*. *Id.*

II. Waiver and Laches

Preliminarily, we address Seivers’s argument that the circuit court erred in concluding that his petition for coram nobis relief is barred by waiver and laches. Although “basic principles of waiver” apply to coram nobis proceedings, a petitioner does not waive his right to pursue coram nobis relief by failing to seek relief on direct appeal or in post-conviction proceedings. *Hyman v. State*, 463 Md. 656, 672 (2019) (citing *Smith, supra*, 443 Md. at 599–602). Therefore, the circuit court correctly concluded that Seivers did not waive his claim by failing to pursue post-conviction relief. We disagree, however, with

the circuit court’s conclusion that Seivers waived his ineffective assistance of counsel claim related to *Brady* and discovery violations by failing to raise that argument “in 2010 when he had the right to do that.” Neither the State nor the circuit court referenced any case law supporting the conclusion that Seivers waived this claim by failing to raise it in 2010 or in a Rule 4-331 motion following this Court’s mandate issued December 22, 2010. Indeed, the State concedes in its brief that “[o]n appeal, the State does not assert, as it did below, that Seivers waived his coram nobis claim.” We conclude that the circuit court erred by holding that Seivers waived his claim that counsel was ineffective by failing to address alleged *Brady* and discovery violations in a timely manner.

The circuit court also concluded that Seivers’s coram nobis petition is barred by laches. “The equitable doctrine of laches bars litigation of a claim when there is unreasonable delay in its assertion and the delay results in prejudice to the opposing party.” *Lopez v. State*, 433 Md. 652, 653 (2013); *see also Niner v. Hanson*, 217 Md. 298, 309 (1958) (“On the point of laches . . . mere lapse of time will not bar the suit . . .”). It is well established that “[t]he party that asserts laches has the burden of proving laches by a preponderance of the evidence.” *Jones v. State*, 445 Md. 324, 339 (2015) (citing *Lopez v. State*, 205 Md. App. 141, 175 (2012), *vacated on other grounds*, 433 Md. 652 (2013)). We review a circuit court’s determination of whether laches bars a party’s claim without deference. *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 585 (citing *Liddy v. Lamone*, 398 Md. 233, 248–49 (2007)).

Our review of the record leads us to conclude that the State failed to meet its burden to show by a preponderance of the evidence that any unreasonable delay resulted in prejudice to the State. The State summarily argued its defense of laches, identifying it as a “common sense” defense and contending that it is “illogical to argue that there is no prejudice by forcing” the parties to retry the case “15 [or] 16 years later.” The circuit court recognized in its decision that there was “no evidence presented” by the State regarding laches. Indeed, the State failed to make any arguments regarding the availability of witnesses or preservation of evidence or otherwise demonstrate how the State’s ability to retry the case would be prejudiced should a new trial be awarded. The circuit court nevertheless concluded that Seivers’s petition was barred by laches, simply asserting that “it doesn’t take a lot of imagination to think it’s going to be a much more difficult case to try now” Under the unique circumstances of this case, we conclude that the State’s proffer of laches was insufficient to satisfy its burden to prove prejudice.

III. Ineffective Assistance of Counsel

We now consider whether the circuit court erred by denying Seivers’s petition for coram nobis relief based on ineffective assistance of counsel. The Supreme Court of Maryland has identified five conditions that must be satisfied for coram nobis relief to be granted. First, “the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character.” *Skok, supra*, 361 Md. at 78. Second, “a presumption of regularity” applies, meaning that the results of the underlying proceeding are presumed to be correct, “and the burden of proof is on the coram nobis

petitioner” to show otherwise. *Id.* (citing *United States v. Morgan*, 346 U.S. 502, 512 (1954)). Third, the petitioner “must be suffering or facing significant collateral consequences from the conviction.” *Id.* at 79. Fourth, as discussed *supra*, “[b]asic principles of waiver” apply. *Id.* Finally, “one is not entitled to challenge a criminal conviction by a coram nobis proceeding if another statutory or common law remedy is then available.” *Id.* at 80. Even if a petitioner establishes these requirements, “the coram nobis court still has the discretion to deny the petition without a hearing if the petitioner does not present the coram nobis court with circumstances compelling such action to achieve justice.” *Smith v. State*, 480 Md. 534, 548 (2022).

Seivers’s grounds for seeking coram nobis relief are unquestionably constitutional in nature. The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, grants criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (citing *McMann v. Richardson*, 397 U.S. 759, 771 n.1 (1970)). Accordingly, any claim contending that trial counsel was ineffective is fundamentally constitutional in nature. As discussed *supra*, Seivers has not waived his right to assert his ineffective assistance of counsel claim in his petition for writ of error coram nobis. Additionally, neither party asserts -- and we do not hold -- that there is any other remedy available for Seivers to pursue. We must, therefore, determine whether Seivers can overcome the presumption of regularity and show that counsel rendered ineffective assistance at trial.

To establish ineffective assistance of counsel, an appellant must show that trial counsel’s performance was deficient and prejudicial to the defense. *Strickland, supra*, 466 U.S. at 685–87. Under the “performance prong,” a petitioner must demonstrate that “counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 687–88. To establish prejudice to the defense, a petitioner must show “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A “reasonable probability” is one that is “sufficient to undermine confidence in the outcome” of the proceeding. *Id.*

Seivers argues that trial counsel was ineffective by failing to raise timely objections to alleged discovery and *Brady* violations. At the time of Seivers’s trial, then-Maryland Rule 4-263 required the State to provide to a defendant “[a]ny material or information tending to negate or mitigate the guilt or punishment of the defendant as to the offense charged.” Md. Rule 4-263(a)(1).⁵ Additionally, the State was required to, upon the request of a defendant, “[p]roduce and permit the defendant to inspect, copy, and photograph any

⁵ Following Seivers’s trial, Rule 4-263 was rewritten by amendment effective July 1, 2008. The current version of the Rule includes similar language requiring the State to provide to a defendant “[a]ll material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant’s guilt or punishment as to the offense charged.” Md. Rule 4-263(d)(5). It also requires the State to allow a defendant “[t]he opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State’s Attorney intends to use at a hearing or at trial.” Md. Rule 4-236(d)(9). Additionally, the State must “make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c).” Md. Rule 4-236(h)(1).

documents, computer-generated evidence . . . recordings, photographs, or other tangible things that the State intend[ed] to use at the hearing or trial.” Md. Rule 4-263(b)(5). The State was required to provide this information to the defendant within twenty-five days after the earlier appearance of counsel or defendant’s first appearance before the court. Md. Rule 4-263(e).

Failure to adhere to the mandates of Rule 4-263 may also constitute a *Brady* violation. A *Brady* violation exists where the prosecutor suppresses or withholds evidence that is favorable to the defense and “material either to guilt or to punishment.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Evidence may be favorable to the defense because it is exculpatory in nature or can be used for impeachment purposes. *Yearby v. State*, 414 Md. 708, 717 (2010) (citing *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)). Furthermore, evidence is material to guilt or punishment where there is a “reasonable probability” that “disclosure of the suppressed evidence would have led to a different result.” *Id.* at 718 (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

Seivers contends that two *Brady* violations occurred at trial. First, Seivers argues that the State withheld *Brady* material in the form of the 9-1-1 recording of Dwayne Perkins. On the recording, Perkins tells the 9-1-1 operator that his employees said the gun used during the robbery looked like a BB gun. Second, Seivers alleges that the State failed to turn over to the defense Joseph Walker’s statement to police identifying the perpetrator’s gun as a BB gun. According to Seivers, the gun was the “only piece of tangible evidence” linking Seivers to the crime. Therefore, he argues that the 9-1-1 recordings and Joseph

Walker's statement to the police were favorable to the defense and material to the case. He concludes that trial counsel was ineffective by failing to respond to these discovery and *Brady* violations in a timely manner.

We begin by analyzing the 9-1-1 recording. Seivers concedes that the State provided Seivers's trial counsel with the 9-1-1 recording prior to trial. Even if the State did so in an untimely manner under Rule 4-263, "[e]vidence *known to the defendant* or his counsel, that is disclosed, even if during trial, is not considered suppressed as that term is used in *Brady*." *Williams v. State*, 416 Md. 670, 691 (2010) (quoting *State v. Rasmussen*, 225 Conn. 55, 91 (1993)) (emphasis in original). In short, "*Brady* offers no relief when the defendant" -- or his counsel -- "knew of the facts before trial." *Id*; see also *Yearby, supra*, 414 Md. at 724 ("If the defendant has actual or constructive knowledge of the allegedly withheld exculpatory information, there cannot be a *Brady* violation."). Therefore, the State's albeit delayed production of the recording to defense counsel did not constitute a *Brady* violation to which trial counsel could have objected at trial.

We similarly conclude that there was no *Brady* violation regarding Joseph Walker's statement to the police. At the circuit court's May 11, 2009 hearing considering Seivers's motion for a new trial, Joseph Walker testified that he told Dwayne Perkins and one of the responding police officers that he believed the gun used by the perpetrator was a BB gun. Seivers contends that the State's failure to produce this statement to the defense prior to trial constitutes a *Brady* violation. Notably, there is nothing in the record to suggest that a record of Joseph Walker's statement to police even exists. The only evidence indicating

that Walker made the statement to police arose during his testimony at the May 2009 hearing on Seivers's motion for a new trial. During that hearing, Detective Lang testified that Joseph Walker never made any such statement to him. Furthermore, Joseph Walker never testified at trial that he believed the gun was a BB gun.

Even assuming Joseph Walker made such a statement and that a record of such statement existed at the time of trial, we do not conclude that there is a reasonable probability that disclosure of this statement -- or trial counsel's objection to the suppression of such a statement -- would have led to a different result at trial. Similarly, assuming *arguendo* that the State's failure to produce the 9-1-1 recording in a timely fashion violated Maryland Rule 4-263, Seivers has failed to show that trial counsel's failure to object to that discovery violation prejudiced the defense in any way.

In reviewing a jury's verdict, we recognize that "[t]he weight of the evidence and the credibility of the witness are matters within the purview of the jury." *Cluster v. Cole*, 21 Md. App. 242, 250 (1974) (citing *Williams v. State*, 5 Md. App. 450, 467 (1968)). At trial, multiple witnesses -- including Detective Lang -- testified that the gun used by the perpetrator during the armed robbery resembled a police service weapon. Detective Lang testified that Baltimore City police officers and trainees are issued a Glock semi-automatic handgun, viewed surveillance photos from the scene of the robbery where the perpetrator's handgun was visible, and testified that the gun "appear[ed] to be a Glock."

Additionally, the gun was not, as Seivers suggests, the only piece of evidence linking him to the crime. There was substantial testimony supporting the conclusion that

Seivers was driving the silver BMW that the perpetrator entered after leaving the McDonald's on Joppa Road. Therefore, notwithstanding the 9-1-1 recording and Joseph Walker's statement to police, there was ample evidence to support the jury's guilty verdict. In short, there is no reasonable probability that the trial's outcome would have differed if trial counsel had objected to the State's untimely production of the 9-1-1 recording or the State's alleged suppression of Joseph Walker's statement.

Accordingly, Seivers has not established that he suffered prejudice as a result of trial counsel's allegedly deficient performance. We, therefore, conclude that Seivers has failed to overcome the presumption of regularity or raise compelling circumstances warranting coram nobis relief. For these reasons, we affirm.

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