Circuit Court for Baltimore City
Case Nos. 103070022, 299306053

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Consolidated Appeals
No. 1973
No. 2110

September Term, 2021

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OMWALEE ALLEYNE

v.

STATE OF MARYLAND

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Wells, C.J.,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),
JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: July 18, 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 to Maryland Rule 1-104(a)(2)(B).

At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

One question these appeals raise is whether a non-citizen defendant's honest but mistaken belief that he is a United States citizen, attributable to no one but himself, is a factual error that renders his guilty plea neither knowing nor voluntary, and therefore constitutionally deficient. We hold that it does not. For that reason and others, we shall affirm the judgments of the Circuit Court for Baltimore City in two cases denying coram nobis relief to Omwalee Alleyne, the appellant.[1]

## FACTS AND PROCEEDINGS[2]

Mr. Alleyne was born in Barbados on October 16, 1980. In 1986, he and his mother and siblings moved to the United States and settled in Baltimore, where his father, also from Barbados, already was living. He always has known that personal history. He attended school in Baltimore City, was issued a social security card, and obtained a driver's license. After graduating from high school, he moved out of his parents' home but remained in Baltimore. He has been employed for most of his adult life. He grew up thinking he was a citizen of the United States, although until 2017, he never discussed that topic with his family members.

[1] On our own motion, we consolidated the appeals because they share a common legal and factual basis and involve the same parties.

[2] These facts are gleaned from the affidavits filed by Mr. Alleyne in both cases and his testimony at the hearing held in one of the cases. There were minor deviations between the content of his affidavits and his testimony, none of which are material to any issue before us. The State did not contest any of the basic first-level facts asserted by Mr. Alleyne.

Unfortunately, Mr. Alleyne also has had two serious run-ins with the law. On February 6, 2000, in the Circuit Court for Baltimore City, he pleaded guilty to possession of cocaine with intent to distribute ("the 2000 cocaine case"). For most of the litigation, he was represented by private counsel, who negotiated a plea agreement with the State.[3] He maintains he and his lawyer did not discuss his immigration status and in any event, he had no reason to think there would be any immigration consequence that could result from his pleading guilty because he thought he was a United States citizen. He did not recall the presiding judge at the plea hearing asking questions about his immigration status. If questions had been asked, he would have assumed they did not apply to him because he believed he was a citizen of the United States. (The transcripts of the guilty plea proceeding no longer exist.) The court handed down a five-year sentence, all suspended except for time served, and three years' supervised probation. Mr. Alleyne did not file any post-judgment motions, applications, or petitions for post-conviction relief.

Then, on November 30, 2004, Mr. Alleyne pleaded guilty to distribution of heroin, also in the Circuit Court for Baltimore City ("the 2004 heroin case"). He was represented by counsel throughout. He still believed he was a United States citizen. He did not recall his attorney asking him about his immigration status. In addition, during the plea colloquy he did not recall being asked whether he was a United States citizen or being advised of any potential immigration consequences of pleading guilty. Again, that would have made

[3] Prior to the plea hearing, but after the plea agreement had been negotiated, Mr. Alleyne's lawyer withdrew his appearance when Mr. Alleyne failed to pay the remainder of his fee. Although his lawyer did not attend the plea hearing, the State still honored the plea agreement.

no difference to him as he believed he was a United States citizen. The court sentenced him to two years' incarceration. He was found to have violated his probation in the 2000 cocaine case and was sentenced to a concurrent two-year term for that. Once again, he did not file any post-judgment motions or applications or petitions for post-conviction relief.

Thirteen years later, in 2017, while preparing to travel outside the United States for the first time as an adult, Mr. Alleyne contacted his parents for advice about how to obtain a passport. They told him they had his passport, so he went to their house to retrieve it. His parents gave him his passport and his "green card." He noticed the passport was issued by the country of Barbados, not by the United States. This confused him. He asked his parents what these documents meant and they told him the members of his family were lawful permanent residents of the United States (which is the immigration status of a green card holder). To Mr. Alleyne's way of thinking, being a lawful permanent resident was not inconsistent with being a United States citizen, so he continued to believe he was a United States citizen. In 2017 or 2018, he took a trip to the Bahamas, reentering the United States without incident.

In January 2021, Mr. Alleyne took his second trip outside the United States, to the Dominican Republic. Upon attempting to reenter the United States, he was detained by immigration authorities, who admitted him as a parolee and deferred his inspection for a determination of admissibility. Subsequently, the Department of Homeland Security issued a Notice to Appear ("NTA"), informing Mr. Alleyne that he was subject to removal

on the ground that his conviction in the 2004 heroin case rendered him ineligible for entry into the United States.[4]

On May 26, 2021, Mr. Alleyne filed a petition for writ of error coram nobis in the 2000 cocaine case; and on June 23, 2021, he filed a petition for writ of error coram nobis in the 2004 heroin case. In both, he alleged that he was suffering significant collateral circumstances and sought to have his conviction vacated. He acknowledged that the transcripts of the plea hearings in both cases no longer were in existence.[5]

In his petition in the 2000 cocaine case, Mr. Alleyne alleged that "the record does not reflect a knowing and voluntary guilty plea which complies with MD Rule 4-242" and there was an "error of fact at the time of the plea."[6] Because there were no transcripts, he attached an affidavit reciting most of the facts set forth above. He requested a hearing.

On January 24, 2022, the court held a hearing at which Mr. Alleyne testified on his own behalf and called Adam Crandell, Esq., an expert on immigration law. Mr. Alleyne's testimony was as recounted above in all material respects. He maintained that because the

[4] In U.S. immigration law, the terms "removal" and "deportation" are synonymous. *Padilla v. Kentucky*, 559 U.S. 356, 360, 364 n.6 (2010).

[5] In the 2000 cocaine case, Mr. Alleyne attached a letter from the Office of the Chief Court Reporter for the Circuit Court for Baltimore City explaining that, pursuant to an administrative order issued by the Chief Judge of the Court of Appeals (now called the Chief Justice of the Supreme Court of Maryland), its "records pertaining to video and audio tapes, digital media, and court reporters' notes and tapes for criminal matters were retained by" the office "for a period of 12 years and were then destroyed."

[6] He also alleged that the guilty plea was "deficient" and "should be stricken" because "he was not advised of the immigration consequences of entering into the plea[,]" in violation of Rule 4-242(f). He does not pursue this claim on appeal.

immigration authorities did not raise any concern when he traveled to the Bahamas and then returned to the United States, he persisted in his belief that he was a United States citizen. He asserted that only upon returning to the United States from the Dominican Republic did he learn, from United States Customs and Border Protection officers, that he was not a citizen of the United States. He testified that if he had known about the immigration consequences of pleading guilty, he would have declined the plea offers and insisted on going to trial in both cases.

Mr. Crandell testified that, although the NTA referred only to the conviction in the 2004 heroin case, Mr. Alleyne's conviction in the 2000 cocaine case would result in the same collateral consequences.[7] The convictions in both cases were doubly detrimental, he explained, because not only do they qualify as crimes of moral turpitude, rendering Mr. Alleyne ineligible for entry into the United States, but also they qualify as aggravated felonies, rendering him ineligible to seek a form of discretionary relief known as cancellation of removal.[8]

The State did not file an opposition to the coram nobis petition and did not call any witnesses at the hearing. The day after the hearing, it filed a response, "respectfully request[ing]" the court to "grant the relief sought by" Mr. Alleyne. The State asserted that

[7] The NTA was introduced into evidence. Mr. Crandell described it as a charging document and explained that nothing would prevent the Department of Homeland Security from later supplementing it to include both convictions. We note that, generally, any conviction that renders an alien ineligible for entry into the United States also renders him subject to removal from the United States. 8 U.S.C. § 1227(a)(1)(A).

[8] *See* 8 U.S.C. § 1227(a)(2)(A)(i)-(iii), (a)(2)(B)(i).

Mr. Alleyne was "credible" in his assertion that when he pleaded guilty in 2000, he thought he was a United States citizen and did not know otherwise. According to the State, under the circumstances it was doubtful that the proceedings resulting in the guilty plea were valid and that the guilty plea was voluntary. Thus, the State agreed that Mr. Alleyne should be granted the extraordinary remedy of vacatur of his conviction, given the significant collateral consequence he faces.

On January 31, 2022, the court entered a memorandum opinion and order denying the coram nobis petition and explaining as follows in its statement of reasons:

> Upon reviewing the applicable rules and authorities encompassed in [the judge's] acceptance of [Mr. Alleyne's] plea in this case, [Mr. Alleyne's] mere recollection that there was no question or exchange about his immigration status or citizenship does not contradict or overtake the presumptive regularity of the proceedings. The Court and the State were both obliged to assure that the necessary and fundamental inquiries of the plea colloquy were accomplished, and a question to [Mr. Alleyne] of his citizenship was not such an inquiry. The factual mistake alleged by [Mr. Alleyne] was not a mistake of the Court or counsel, and did not relate to the advice of rights acknowledged but waived by [Mr. Alleyne] upon pleading guilty. Nor does [Mr. Alleyne's] lack of recall about the substance of his plea hearing 22 years ago meet his burden to rebut the presumptive regularity of the proceedings.
>
> In view of the applicable rules on February 7, 2000 and the presumptive regularity of the guilty plea proceeding before [the judge] upon accepting [Mr. Alleyne's] plea as voluntary and knowing, it remains for this Court to determine whether the significant collateral consequence, potential deportation, warrants the relief sought by [Mr. Alleyne] by a writ of error *coram nobis*. [Mr. Alleyne's] 'authentic belief that he was a United States citizen,' despite knowing he was born in Barbados and entered the United State[s] at age 6, is not a factual or legal error cognizable for *coram nobis* relief; his own factual and legal mistakes over the years do not constitute fundamental errors that warrant reversal of his conviction. [Mr. Alleyne's] failure to appreciate potential collateral consequences of his plea, because of his own factual insistence and his own legal mistake about his citizenship, would not have changed the validity of the trial court's acceptance of his plea

> as knowing and voluntary. A knowing plea requires the defendant to understand the nature of the offense and the possible consequences of the plea. *See* [*Boykin v. Alabama*, 395 U.S. 238, 243 (1969)]. [Mr. Alleyne's] participation in the plea colloquy, and the court's acceptance, does not require [Mr. Alleyne] to know and identify his country of origin or citizenship, nor does it impose a burden on counsel or the court to undertake an investigation to discover this information in such circumstances as described by [Mr. Alleyne].

(Footnotes omitted.)

Similarly, in his coram nobis petition in the 2004 heroin case, Mr. Alleyne alleged that his guilty plea was invalid because when he entered the plea he was operating under an error of fact, *i.e.*, that he was a United States citizen, and "the record does not reflect a knowing and voluntary guilty plea which complies with MD Rule 4-242."[9] He acknowledged that the transcripts of the guilty plea proceeding no longer exist and attached the same personal affidavit as in the 2000 cocaine case. He requested a hearing.

The State filed an opposition, asserting, among other things, that Mr. Alleyne's petition was deficient because it did not offer sufficient evidence in support, failed to rebut the presumption of regularity in the underlying proceedings, and was barred by laches.

On January 11, 2022, the circuit court issued a memorandum order and statement of reasons denying the petition without a hearing. The court noted that it is "common practice, that to comply with the requirements of Maryland Rule 4-242(c), the State's

[9] Mr. Alleyne made other allegations in his petition. They included that the guilty plea was "deficient" and "should be stricken" because "he was not advised of the immigration consequences of entering into the plea[,]" in violation of Rule 4-242(f). He also alleged that he did not understand the nature of the charge against him (distribution of heroin). These allegations were rejected by the court below and are not being challenged on appeal.

Attorney and attorney for the defendant will examine the defendant on the record by conducting a plea colloquy which advises the defendant of the rights he is waiving by accepting the plea, confirms that the defendant is knowingly and voluntarily accepting the plea, and informs the defendant of the nature of the charge." Concluding that Mr. Alleyne had failed to rebut the presumption of regularity that attaches to criminal proceedings, the court rejected his assertion that the waiver colloquy had been constitutionally deficient. The court found no evidence to suggest that Mr. Alleyne's plea had not been knowing and voluntary and no evidence, beyond Mr. Alleyne's own "unsupported allegation[,]" that he had not been advised of the immigration consequences of his guilty plea. Finally, the court concluded that the claim was barred by laches as Mr. Alleyne had delayed, unreasonably, in challenging the guilty plea and the State had suffered prejudice as a result.

Mr. Alleyne noted timely appeals from the judgments entered in both cases. The questions presented, slightly rephrased, are:

I. **Appeal No. 2110 (2000 cocaine case)**: Did the circuit court err in finding that Mr. Alleyne failed to rebut the presumption of regularity in his guilty plea proceeding when he was operating under the belief that he was a United States citizen and would not suffer significant collateral consequences?

II. **Appeal No. 1973 (2004 heroin case)**: Did the circuit court err by denying coram nobis relief when Mr. Alleyne's guilty plea was based on an error of fact?

For the following reasons, we shall affirm the judgments.

## DISCUSSION

### Standard of Review

In a coram nobis proceeding, we review the circuit court's factual findings for clear error and its legal conclusions without deference. *State v. Rich*, 454 Md. 448, 471 (2017).

"Under the clearly erroneous standard, if there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Johnson v. State*, 440 Md. 559, 568 (2014) (citations and quotations omitted). We review a circuit court's ultimate decision to grant or deny a coram nobis petition for abuse of discretion. [*Kenyatta*] *Smith v. State*, 480 Md. 534, 546 (2022); *Rich*, 454 Md. at 471. "An abuse of discretion 'occurs where no reasonable person would take the view adopted by the circuit court.'" *Smith*, 480 Md. at 546 (quoting *Mainor v. State*, 475 Md. 487, 499 (2021)). In a coram nobis proceeding, the State may invoke the doctrine of laches as an affirmative defense. *Jones v. State*, 445 Md. 324, 343 (2015). "An appellate court reviews without deference a trial court's conclusion as to whether the doctrine of laches bars a party's filing." *Id.* at 337.

**Governing Legal Principles**

A writ of coram nobis is an "extraordinary remedy" that affords a person who has been convicted of a crime but no longer is serving his sentence and therefore is ineligible to pursue other remedies (such as post-conviction or habeas corpus) an opportunity to collaterally attack the conviction on constitutional grounds. *Skok v. State*, 361 Md. 52, 72, 80 (2000). "[R]ooted in English common law," *Smith*, 480 Md. at 546, it was originally conceived as a means to reopen a judgment "'to correct errors of fact[,] . . . affecting the validity and regularity of the judgment,'" *Skok*, 361 Md. at 67 (quoting *Madison v. State*, 205 Md. 425, 432 (1954)), and which had been "unknown to the trial judge[.]" *Id.* at 72. In modern times, the scope of the writ has been broadened to permit consideration of "'fundamental'" errors of law "where no other remedy is presently available and where

there were sound reasons for the failure to seek relief earlier." *Id.* at 72-73 (quoting *United States v. Morgan*, 346 U.S. 502, 512 (1954)).

A coram nobis petitioner must satisfy the following conditions to establish eligibility for relief:

> (1) '"the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character"';
>
> (2) '"the coram nobis petitioner must be suffering or facing significant collateral consequences from the conviction"'; and
>
> (3) '"another statutory or common law remedy"' is not '"then available"' for challenging the conviction.

*Rich*, 454 Md. at 462 (quoting *Skok*, 361 Md. at 78-80).

In addition, two procedural requirements apply:

> (1) '"a presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner"'; and
>
> (2) '"[b]asic principles of waiver are applicable to issues raised in coram nobis proceedings[,]"' and '"[s]imilarly, where an issue has been finally litigated in a prior proceeding, and there are no intervening changes in the applicable law or controlling case law, the issue may not be relitigated in a coram nobis action."'

*Id.* (quoting *Skok*, 361 Md. at 78-79).[10]

[10] Subsequent development of decisional and statutory law has limited the effect of the second condition with respect to waiver. *See State v.* [*Kerryann*] *Smith*, 443 Md. 572, 600 (2015) (giving an expansive interpretation to the coram nobis anti-waiver statute, Md. Code, Criminal Procedure Article, § 8-401, and concluding that neither the failure to seek leave to appeal, to move to withdraw a guilty plea, or to file a post-conviction petition can be construed as a waiver for purposes of coram nobis); *compare with McElroy v. State*, 329 Md. 136, 148-49 (1993) (finding waiver under the Postconviction Procedure Act of a claim of an involuntary guilty plea because the defendant failed to file an application for leave to appeal from the judgment).

**Appeal No. 2110: 2000 Cocaine Case**

Mr. Alleyne contends the coram nobis court erred in finding that he failed to rebut the presumption of regularity attaching to the underlying criminal proceeding. He maintains that his "authentic" but erroneous belief that he was a United States citizen was an error of fact that so undermined the judgment in the criminal case that vacatur was warranted. Moreover, due to that error of fact, his guilty plea was not knowing and voluntary, and therefore was entered in violation of his right to due process. The State counters that the error of fact asserted here, which is attributable solely to Mr. Alleyne and not to the court, the prosecutor, or defense counsel, is not a ground for coram nobis relief.[11]

It bears repeating that "a presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner." *Rich*, 454 Md. at 462 (citation and quotations omitted). In this case, after hearing testimony and receiving documentary evidence, the court found that Mr. Alleyne had failed to rebut the presumption of regularity, given the nature of his claims and the unavailability of the transcript of the 2000 plea hearing. The court opined that Mr. Alleyne's "mere recollection that there was no question or exchange about his immigration status or citizenship does not contradict or overtake the

[11] In Case No. 2110, Appellant takes no issue with the State's having changed its position (affirm the denial of the writ) from that which it assumed in the trial court (grant the writ). In any event, the State's change in position does not prevent us from affirming on any ground supported by the record. *See Unger v. State*, 427 Md. 383, 406 (2012) (observing that "an appellee is entitled to assert any ground adequately shown by the record for upholding the trial court's decision, even if the ground was not raised in the trial court, and . . . , if legally correct, the trial court's decision will be affirmed on such alternative ground").

presumptive regularity of the proceedings." There was neither a clear error of fact nor an error of law in this ruling.

The coram nobis court observed that when the guilty plea was entered, the court, trial counsel (if any), and the prosecutor were "obliged to assure that the necessary and fundamental inquiries of the plea colloquy were accomplished, and a question to [Mr. Alleyne] of his citizenship was not such an inquiry." In that regard, in 2000, when the guilty plea in the cocaine case was entered, Rule 4-242(e) stated:

> (e) **Collateral Consequences of a Plea of Guilty or Nolo Contendere.** Before the court accepts a plea of guilty or nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship and (2) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.
>
> The Committee note stated in relevant part:
>
> **In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status.** Rather, the court should ensure that all defendants are advised in accordance with this section.

(Emphasis added.) Thus, at the relevant time, the court was not duty bound to inquire about Mr. Alleyne's citizenship or immigration status; on the contrary, the pertinent rule forbade it from doing so. As for trial counsel, according to Mr. Alleyne's own testimony (and consistent with what remains of the record), he was no longer represented when he entered his plea, and in any event, as the court observed, he offered no evidence apart from his own self-serving testimony (which the court apparently did not credit) suggesting that his

erstwhile trial counsel had failed to advise him of the immigration consequences of his plea, or that he would have relied upon such advice had it been given.

Moreover, the claimed error of fact — that Mr. Alleyne thought he was a United States citizen when he was not — bore no relationship to his understanding of the nature and elements of the offense to which he pleaded guilty,[12] or to the trial rights he was waiving by pleading guilty. As the United States Supreme Court has observed, "the Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." *United States v. Ruiz*, 536 U.S. 622, 630 (2002). We would include among such "forms of misapprehension" Mr. Alleyne's own ignorance of his citizenship and immigration status.

There was no evidence that Mr. Alleyne's ignorance of his true immigration status was attributable to the court, trial counsel, the prosecutor, or any state actor. Mr. Alleyne's testimony showed that at some point in time, either he or his parents obtained a "green card" for him, which reflected his status as a lawful permanent resident of the United States, and that as of 2017, he had a passport from the country of Barbados that had been obtained recently enough for him to use that year or the next and again in 2021. It would seem unlikely that those documents would bear photographs of Mr. Alleyne as a child.

[12] Knowledge of citizenship status was not an element of the offense to which the appellant pleaded guilty, in either of these cases.

Mr. Alleyne did not testify that his parents deceived him with respect to his immigration status or that there was anything that prevented him from knowing his immigration status throughout his life. He suggests that the fact that he obtained a social security card and a driver's license without difficulty and reentered the United States from the Bahamas with no problem, all operated to reassure him that he was a United States citizen. A lawful permanent resident of the United States can obtain a social security card[13] and driver's license,[14] however, and the failure of border officials to detect that he was not a citizen upon return from the Bahamas was just that, a failure, not a representation. Thus, even if we assume that Mr. Alleyne's mistaken belief that he was a United States citizen

[13] According to the United States Social Security Administration:

> Upon admission to the United States based on your immigrant visa, you will be a U.S. permanent resident. Each permanent resident needs a Social Security Number (SSN). An SSN will help you to work in the United States, to conduct business with a bank or financial institution, to pay your taxes or to be listed as a dependent on a tax return, and for other purposes.

*Social Security Numbers for U.S. Permanent Residents*, SOC. SEC. ADMIN., available at https://www.ssa.gov/ssnvisa/Handout_11_1.html#:~:text=You%20must%20come%20to%20a,apply%20for%20an%20SSN%20card (last visited Jul. 11, 2023).

[14] According to the Maryland Motor Vehicle Administration:

> Federally compliant driver's licenses and ID cards are issued to US citizens, immigrants with permanent residence and non-immigrants with valid US Citizenship and Immigration Services documentation who can prove lawful status in the United States.

*Driver Licensing Questions*, "Who is issued a federally compliant and federally non-compliant driver's license or ID card?", MARYLAND DEP'T OF TRANSP., available at https://mva.maryland.gov/Pages/driver-licensing-questions.aspx#1 (last visited Jul. 11, 2023).

was authentic, that belief was a product of his own thinking and lack of diligence in determining his own status. It could have been cured at any time by action on his own part.

We conclude that Mr. Alleyne's claimed error of fact did not undermine the reliability of his guilty plea so as to require vacatur, nor did it undermine the knowing and voluntary nature of his plea. The circuit court did not abuse its discretion by denying the coram nobis petition.

**Appeal No. 1973: 2004 Heroin Case**

In a slight variation on the same theme, Mr. Alleyne contends that because his petition was based on a classic ground for coram nobis relief — a mistake of fact that, had it been known, would have prevented the judgment from being entered — the court erred by denying him relief. Once again, he maintains that when he pleaded guilty he was unaware, due to an error of fact, that he was not a United States citizen, and had he known his true immigration status, he would not have entered a guilty plea nor would the court have accepted it. He strongly suggests that his own mistaken belief about his citizenship status when he pleaded guilty was no fault of his own.[15] Furthermore, he asserts, the circuit court erred by failing to address his error of fact claim in its statement of reasons.[16]

[15] In Mr. Alleyne's words, when he entered his guilty pleas in both cases, he "continued to fully and genuinely believe and operate in society under the impression that he was a United States citizen, with no glaring governmental hurdles that imposed the contrary [belief]."

[16] Mr. Alleyne expressly disclaims his prior assertions that the circuit court violated Rule 4-242 in accepting his guilty plea.

The State counters that the circuit court correctly denied Mr. Alleyne's coram nobis petition on the ground of laches. (Mr. Alleyne does not address the laches ruling in his brief and did not file a reply brief.) Alternatively, according to the State, "error" as a ground for coram nobis relief does not encompass a mistake of fact entirely attributable to the defendant himself, which is the type of mistake claimed here. Accordingly, asserts the State, there was no basis for the court to grant coram nobis relief.

"The doctrine of laches, which is both an affirmative defense and an equitable defense, applies where there is an unreasonable delay in the assertion of one party's rights and that delay results in prejudice to the opposing party." *Jones*, 445 Md. at 339 (citations and quotations omitted) (cleaned up). The State, as the party raising laches in the circuit court, had the burden of proof by a preponderance of the evidence. *Id.* "[F]or purposes of the doctrine of laches, delay begins when a petitioner knew or should have known of the facts underlying the alleged error[.]" *Id.* at 344. In this case, because Mr. Alleyne claims he did not know he was not a United States citizen when he entered his 2004 guilty plea and did not learn otherwise until 2021, determining the triggering date for measuring the length of delay is intertwined with the ordinarily separate question of the reasonableness of the delay. Given that the circuit court did not hold a hearing on the petition in this case,[17] we must assume for purposes of this appeal that Mr. Alleyne did not know his citizenship

[17] The court was not required to hold a hearing. Only when a circuit court grants a coram nobis petition is it required to hold a hearing on the matter. Md. Rule 15-1206(a).

and immigration status in 2004.[18] Thus, we must decide whether his lack of knowledge was itself reasonable. We conclude that it was not.

Mr. Alleyne maintains that he should not be charged with constructive knowledge of his citizenship status until 2021, when immigration officials informed him that he was not a United States citizen (which of course is when he had actual knowledge). We disagree. As we have discussed above, there was no allegation, let alone proof, that any state actor or anyone else, including Mr. Alleyne's family members, withheld or concealed accurate information about Mr. Alleyne's immigration status from him. Nor was there an allegation that Mr. Alleyne suffered a mental deficiency that could have rendered him unable to enter a knowing and voluntary plea.[19] There was nothing and no one ever preventing Mr. Alleyne from gaining full knowledge of his immigration status, so as to cure his incorrect belief about it. He was the only person responsible for his ignorance. If

[18] Although laches generally depends upon underlying factual findings in the circuit court, the court was not precluded from finding laches without holding a hearing, nor are we precluded from affirming its decision. *See, e.g.*, *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 584-85 (2014) (recognizing that "the affirmative defense of laches in Maryland can be invoked by a court on its own initiative, even if it was not pleaded" and declaring that, where the parties "had a full opportunity to present evidence on the issue, as well as to argue their position" both in the circuit court and on appeal, it was appropriate to reach that issue in an appeal from a grant of summary judgment) (citation and quotations omitted); *Schaeffer v. Anne Arundel Cnty.*, 338 Md. 75, 77-78 (1995) (affirming the grant of summary judgment on the ground of laches).

[19] Even in a case in which a defendant's competency to stand trial is at issue, a court must be given some indication that competency is in question before it becomes obligated to investigate further. *See Wood v. State*, 436 Md. 276, 287 (2013) (observing that "a trial court's duty to determine the competency of the accused is triggered in one of three ways: (1) upon motion of the accused; (2) upon motion of the defense counsel; or (3) upon a *sua sponte* determination by the court that the defendant may not be competent to stand trial") (citation and quotations omitted).

he had taken initiative to determine his immigration status, he would have known that he was not a United States citizen as a fact, not as a belief, when he entered the 2004 guilty plea.[20]

In the context of laches, prejudice "is generally held to be anything that places the opposing party in a less favorable position." *Jones*, 445 Md. at 340 (citation and quotation omitted) (cleaned up). Prejudice includes both "the State's ability to defend against the coram nobis petition" as well as its "ability to reprosecute." *Id.* at 357. "[T]he State need not prove that the delay makes it impossible to reprosecute a petitioner; instead, the State must prove simply that the delay places the State in a less favorable position for purposes of reprosecuting the petitioner." *Id.* at 360 (citations and quotations omitted).

[20] At times, plea bargains have been compared to contracts, although our Supreme Court has cautioned that contract law principles do not always apply without qualification in determining such issues as the terms of a plea agreement or whether such an agreement was breached. *See, e.g.*, *Cuffley v. State*, 416 Md. 568, 579-80 (2010). Nevertheless, we construe Mr. Alleyne's claim of error of fact as analogous to an attempt to seek rescission of a contract on the ground of unilateral mistake. In that regard, the Supreme Court has said:

> The general rule as to the conditions precedent to rescission for unilateral mistakes may be summarized thus: 1, the mistake must be of such grave consequences that to enforce the contract as made or offered would be unconscionable; 2, the mistake must relate to a material feature of the contract; 3, the mistake must not have come about because of the violation of a positive legal duty or from culpable negligence; 4, the other party must be put *in statu*[*s*] *quo* to the extent that he suffers no serious prejudice except the loss of his bargain.

*Mayor of Baltimore v. DeLuca-Davis Constr. Co.*, 210 Md. 518, 527 (1956). Here, two of those conditions are not satisfied. The mistake is attributable to Mr. Alleyne's own failure to determine his actual immigration status and if the conviction were vacated nearly 19 years after the fact, the State could not be returned to the status quo ante.

It can hardly be disputed that the State suffered prejudice as a result of the delay in this case, given that the transcripts of the 2004 guilty plea proceeding no longer exist and it would be nearly impossible to retry this case because of the unavailability of either the physical evidence or any witnesses (or, at least, any witnesses who could sufficiently recall what had happened) from so long ago.

Given that there never was anything preventing Mr. Alleyne from knowing his own immigration status, he should have been aware of the facts underlying the alleged error in 2004. He did not seek relief from the judgment until 17 years later, however. That together with the prejudice resulting to the State leads us to conclude, on our own independent review of the record, that the circuit court correctly found that Mr. Alleyne's claim for coram nobis relief was barred by laches.

Because the court did not err in its ruling on laches, Mr. Alleyne's contention that the circuit court, in its statement of reasons, failed to address one of the claims in his coram nobis petition, specifically, that his petition should have been granted because his 2004 guilty plea was based upon an error of fact, is not material, even if correct.[21] *See* [*Wade*] *Smith v. State*, 219 Md. App. 289, 293-95 (2014) (holding that remand to ensure compliance with Rule 15-1207 is not required when the appeal record is adequate to resolve the case). Nevertheless, for the reasons already explained, we agree with the State that Mr.

[21] Maryland Rule 15-1207(a) provides:

> (a) **Statement.** – The judge shall prepare and file or dictate into the record a statement setting forth separately each ground on which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the ruling.

Alleyne's claimed lack of knowledge of his own citizenship and immigration status when he pleaded guilty is not cognizable as an error of fact for purposes of coram nobis relief. Again, that mistake only can be attributed to Mr. Alleyne. The United States Supreme Court and our own Supreme Court have strongly suggested or declared that to be cognizable as a ground for coram nobis relief, an error of fact must have occurred through no fault of the defendant. *United States v. Morgan*, 346 U.S. 502, 508-09 (1954) (discussing *United States v. Mayer*, 235 U.S. 55, 67 (1914)); *Keane v. State*, 164 Md. 685, 691-92 (1933); *see Pitt v. State*, 144 Md. App. 49, 59-60 (2002) (explaining that the writ "'lies to obtain relief from such errors of fact as the infancy, death, or coverture of the defendant, in cases where those defenses, if known at the time, would have prevented a judgment, but which through no fault of the defendant were not known when the judgment was entered'" (quoting *Keane*, 164 Md. at 691-92)).

This might be a different case if the offense to which Mr. Alleyne pleaded guilty required knowledge of his immigration status as an element. But that is not the case here. Thus, we cannot say that it would have been an abuse of discretion for the circuit court to deny relief on this ground. *Smith*, 480 Md. at 546.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IN APPEAL NO. 1973, SEPTEMBER TERM, 2021 AFFIRMED. COSTS ASSESSED TO THE APPELLANT.**
**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IN APPEAL NO. 2110, SEPTEMBER TERM, 2021 AFFIRMED. COSTS ASSESSED TO THE APPELLANT.**