

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2223

September Term, 2015

GREGORY D. BAILEY

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: April 18, 2016

*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 2011, Gregory D. Bailey entered an *Alford* plea, in the Circuit Court for Worcester County, the Honorable Thomas C. Groton, III, presiding, to sexual abuse of a minor and two counts of incest. In 2014, Bailey filed a petition for post-conviction relief in which he requested a new trial. Bailey’s post-conviction counsel subsequently filed a supplement to the petition, representing the right to file a belated motion for modification of sentence. Following a hearing, the post-conviction court, the Honorable Brian D. Shockley presiding, granted Bailey a belated motion for modification of sentence but denied him a new trial. In 2015, Bailey filed a motion to reopen his petition for post-conviction relief, in which he contended that the plea court erred in “fail[ing] to state on the record . . . that [his] waiver of a jury trial was knowingly and voluntarily made,” and post-conviction counsel “was ineffective for” failing to challenge the error. (Capitalization omitted.) The court, Judge Groton presiding, subsequently denied the motion.

Bailey now applies for leave to appeal from that judgment, on the grounds that the plea court’s “examination for the Jury Waiver, and its omission of its finding, on the record, was in violation of” Maryland Rule 4-246(b) and that post-conviction counsel provided ineffective assistance in “fail[ing] to advise and supplement [Bailey’s] Post Conviction Petition, regarding the . . . Jury Waiver violation.” We shall grant the application, but for a different reason: Rule 4-406(b) provides that a post-conviction “hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.” Thus, Judge Groton was precluded from ruling on the motion to reopen. Accordingly, we vacate the

judgment of the circuit court and remand this case for reconsideration of the motion to reopen by a judge other than Judge Groton.

**APPLICATION FOR LEAVE TO APPEAL
GRANTED. JUDGMENT OF THE CIRCUIT
COURT FOR WORCESTER COUNTY
VACATED. CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY RESPONDENT.**