UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2772

September Term, 2011

GEORGE MATTHEWS

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 16, 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 *Yonga v. State*, ___ Md. ___, No. 30, Sept. Term 2015, 2016 WL 320721, *12 (filed Jan. 27, 2016), the Court of Appeals held that "a person who has pled guilty may not later avail himself or herself of the relief afforded by the Petition for a Writ of Actual Innocence." At issue in the present appeal is whether this holding should be extended to cases in which the defendant entered an *Alford* plea[1] to criminal charges. We believe the answer to this question is "yes" and will affirm the judgment of the Circuit Court for Baltimore City, albeit for reasons different from those of the circuit court.

Background

In 2000, George Matthews entered *Alford* pleas to charges of second degree murder and use of a handgun in the commission of a crime of violence, arising out of the death of Kenneth Cunningham. The court sentenced him to a term of thirty years incarceration for the murder and to a consecutive term of ten years incarceration for the handgun offense.

After several unsuccessful attempts at obtaining post-conviction relief, in 2007, Matthews filed what was in effect a motion for a new trial based upon newly-discovered evidence. He attached to his motion an affidavit from Brian Sollers (who would have been a witness against Matthews had there been a trial), in which Sollers admitted that he had given the police misleading information implicating Matthews in the murder. The circuit court denied the motion without a hearing. Matthews appealed to this Court. We

[1] *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

vacated the circuit court's judgment and remanded the case with instructions for the circuit court to hold a hearing on the motion. *Matthews v. State,* 187 Md. App. 496, 498 (2009) ("*Matthews I*"). The Court of Appeals granted the State's petition for certiorari. *State v. Matthews,* 411 Md. 599 (2009). While his appeal was pending, the General Assembly enacted what is now Criminal Procedure Article § 8-301, which established a new post-conviction remedy: the Petition for a Writ of Actual Innocence. The Court vacated our judgment and remanded the case to the circuit court, instructing it to treat Matthews's motion as such a petition. *State v. Matthews*, 415 Md. 286, 312–13 (2010) ("*Matthews II*").

On remand, the circuit court held a hearing on Matthews's petition and concluded: (1) Matthews could obtain relief under Crim. Pro. § 8-301 even though he had pled guilty; (2) the information in the Sollers affidavit was not newly-discovered evidence; and (3) even if the evidence were considered, "there is no substantial or significant possibility that the result would have been different." The court denied the petition by means of a thorough memorandum opinion filed on January 18, 2012. Matthews filed this timely appeal.

Discussion

After the parties filed their briefs, this Court filed its decision in *Yonga v. State*, 221 Md. App. 45, 71–77 (2015), holding that an individual who pled guilty cannot

obtain relief via a Petition for a Writ of Actual Innocence. As noted, the Court of Appeals granted certiorari on that issue and affirmed in *Yonga v. State*, __ Md. __, No. 30, Sept. Term 2015, 2016 WL 320721 (filed Jan. 27, 2016). Because we conclude that *Yonga* governs this appeal, we examine that decision in detail.

The *Yonga* Decision and its Rationale

Writing for a unanimous Court, Judge Battaglia first rejected Yonga's assertion that the legislative history of Crim. Pro. § 8-301 supported his contention that the statute was intended to provide a remedy to individuals who plead guilty. After reviewing the legislative history, the Court observed that "[t]he history of the legislation reflects that Section 8-301 was intended to expand the breadth of a motion for a new trial under Rule 4-331(c)(1)." *Id.* at *5. Further, the Court explained that, as currently formulated, Rule 4-331(c) "provides for filing a motion for a new trial based on newly discovered evidence within one year from the date of the sentence or mandate[.]" *Id.* at *8. The Court concluded that throughout its history, Rule 4-331(c)'s "newly discovered evidence" rule has contemplated that "the standard of 'substantial or significant possibility that the result may have been different' was to be applied when a conviction resulted from a trial." *Id.* at *7.[2]

[2]The Court also rejected Yonga's contention that its decision in *Matthews II* tacitly approved a Writ of Actual Innocence after a guilty plea:

> We held that because Section 8-301 had been enacted while the case

(continued...)

Having addressed Yonga's claims that legislative history and precedent opened the door to a Writ of Actual Innocence after a guilty plea, the Court of Appeals explained why such a remedy is both theoretically and practically impossible:

> Thus, the weighing mechanism required by the "substantial or significant possibility" standard adopted in Section 8-301(a)(1), and judicially determined through Rule 4-331(c)(1), can only be utilized after a jury or bench trial resulting in conviction has occurred.
>
> In contrast, a guilty plea contains none of the facets of a trial, evidence production and credibility determinations, for example, that informs the court when evaluating whether the proffered newly discovered evidence had a substantial or significant possibility that a different result would have occurred. When an individual pleads guilty, credibility determinations are not tested, reliability and validity are not challenged, and relevance is not an issue. The gravamen of a guilty plea is whether it was undertaken by the accused "voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences." A trial judge, in accepting a guilty plea, is primarily concerned with insuring its validity, not with the weight of the evidence.
>
> We agree, then, with our brethren on the Court of Special Appeals that only a conviction garnered after a bench or jury trial can provide the fodder against which the standard in Section 8-301(a)(1) can be measured.

Id. at *10–11(citations omitted; emphasis added).

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[2](...continued)
was pending and there was a dearth of "rules of procedure to guide the process" Matthews's motion for a new trial, untimely under Rule 4-331(c)(1), could be treated as a Petition for Writ of Actual Innocence and we left the issue of whether the petition met the requirements of the statute for the circuit court to address[.]

> We, therefore, did not decide, as Yonga suggests, that Matthews was *entitled* to proceed on a Writ of Actual Innocence.

Id. at *9–10 (emphasis in original).

We recently applied *Yonga's* teachings in *Smallwood v. State*, ___ Md. App. ___, 2016 WL 743015, at *4–*5 (2016). In *Smallwood*, we held that a defendant who plead not guilty under an agreed statement of facts was not eligible for relief through a petition for actual innocence alleging that he was not criminally responsible at the time the offense occurred.

The Application of *Yonga* to *Alford* Plea Cases

"An *Alford* plea is 'a guilty plea containing a protestation of innocence,' which 'lies somewhere between a plea of guilty and a plea of *nolo contendere*[,]' where a 'defendant does not contest or admit guilt.'" *Jackson v. State*, 207 Md. App. 336, 361 (2012) (quoting *Bishop v. State*, 417 Md. 1, 18–19 (2010)).

In *Ward v. State*, 83 Md. App. 474, 480 (1990), we held that an *Alford* plea was "the functional equivalent of a guilty plea," and that there was no right of direct appeal from a conviction entered after an *Alford* plea. In reaching this conclusion, we noted that Md. Rule 4-242(c) provided that a court could accept a guilty plea "'*even though the defendant does not admit guilt.*'" *Id*. at 479 (emphasis in *Ward*). We concluded that "[p]ursuant to Rule 4-242(c), we do not see how an *Alford* plea could be construed as anything short of a guilty plea." *Id*.

We believe that there is no reason why an *Alford* plea should be treated differently than a guilty plea in the context of a Petition for a Writ of Actual Innocence. To hold

otherwise would have the effect of introducing all of the theoretical anomalies and practical difficulties identified by the Court of Appeals in *Yonga* into an actual innocence proceeding involving a conviction based on an *Alford* plea.

We recognize that the circuit court proceeded on the assumption that Matthews had the right to seek relief through a Petition for a Writ of Actual Innocence. The parties did the same both before the circuit court and on appeal. Nevertheless, our task is to determine whether the circuit court erred in denying Matthews's petition for relief under Crim. Pro. § 8-301. The Court's ruling was correct because the statute does not provide an avenue for relief to individuals in Matthews's situation. *See State v. Cates*, 417 Md. 678, 691–92 (2011) ("'An appellee, in seeking an affirmance, is ordinarily entitled to assert any ground shown by the record for upholding the trial court's decision, even though the ground was not relied on by the trial court and was perhaps not raised in the trial court by the parties.'" (quoting *Grant v. State*, 299 Md. 47, 53 n. 3 (1984))).[3]

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3]Were we to restrict our analysis solely to the circuit court's ruling, we would conclude that the court did not abuse its discretion in denying the petition. To that end, we adopt by reference Parts III B and III C of the circuit court's memorandum opinion.

Finally, the State has moved to dismiss this appeal for various reasons, most notably, that Matthews did not provide a transcript of the circuit court's hearing. Our decision on the merits moots the State's motion.