Circuit Court for Prince George's County
Case No. CT960200X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1741

September Term, 2016

DERRELL LAMONT GILCHRIST

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2017

*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 2016, Derrell Lamont Gilchrist, appellant, filed a petition for writ of error *coram nobis* in the Circuit Court for Prince George's County, challenging his 1996 *Alford* plea to assault with the intent to murder and use of a handgun in the commission of a crime of violence. The circuit court found that the plea was "voluntarily and knowingly made" and denied relief. Gilchrist appeals that judgment. For the reasons to be discussed, we affirm.

BACKGROUND

In 1996, Gilchrist was charged with attempted murder, assault with the intent to murder, use of a handgun in the commission of a crime of violence, and related offenses. On December 5, 1996, he appeared in court with counsel and, pursuant to an agreement with the State, entered an *Alford* plea to assault with intent to murder and the handgun offense. During the plea colloquy, the court elicited from Gilchrist that he was twenty-one years old, had completed the eleventh grade, and he had not consumed any drugs, alcohol, or medications that day. The colloquy also included the following:

> THE COURT: And are you satisfied with the services of your attorney, Mr. McGowan?
>
> GILCHRIST: Yes, sir.
>
> THE COURT: Has he explained to you all the elements of the offenses charged against you?
>
> GILCHRIST: Yes.
>
> THE COURT: And all the ramifications of the guilty plea under Alford v. North Carolina?
>
> GILCHRIST: Yes.
>
> THE COURT: I understand you wish to plead guilty to Count 2, which is assault with intent to murder, and Count 5, which

> is use of a handgun in the commission of a crime of violence, in the commission of a felony. Is that correct?
>
> GILCHRIST: Yes.

(Emphasis added.)

The State proffered the following facts in support of the plea.

> Had this matter gone to trial, the State would have shown on January 23, 1996, at approximately 1900 hours, at 8102 Takoma Drive in Langley Park, Prince George's County, Maryland, the Defendant, Derrell Lamont Gilchrist, seated before Your Honor, shot the victim in this particular matter, Mr. Martin, one time in the left chest and one time in the middle of the back with a .32 caliber semi-automatic handgun after a verbal altercation over a dispute.
>
> The victim, Bobby Martin, knew the Defendant only by the nickname of Pig. An investigation revealed that Pig's real name was Derrell Gilchrist. A photo spread containing the Defendant was shown to the victim approximately two days after this incident by Detective Morrisette of the Prince George's County Police Department, where the victim, Mr. Martin, positively identified the Defendant as the subject who had shot him two times two days prior.

The court found that the proffer of facts was "sufficient probable cause to support the plea" and the colloquy continued:

> THE COURT: You understand the maximum penalty I could impose in this case is 30 years for assault with intent to murder and 20 years, along with the gun charge, and that the gun charge can run consecutive to the assault with intent to murder. That is 50 years. But in any event, I have to give you the five years mandatory on the gun charge. However, I agreed with the State's Attorney and your attorney that I would abide by their agreement. And I understand the State would dismiss the remaining counts, and the State is free to allocute, and the defense is free to allocute with the idea that I will recommend Patuxent and there will be a cap of 10 years. Is that your understanding?

> [DEFENSE COUNSEL]: The only other thing that I would add, Your Honor, is that the defense will be filing a motion for reconsideration and the Court would agree to hold that open for a year.
>
> THE COURT: Is that your understanding, sir?
>
> GILCHRIST: Yes, sir.
>
> THE COURT: Now, other than that agreement, has anyone promised you any reward or any type of leniency to get you to plead under Alford?
>
> GILCHRIST: No.
>
> THE COURT: Has anybody used any force or intimidated you in any matter?
>
> GILCHRIST: No.
>
> THE COURT: Did you understand all the questions?
>
> GILCHRIST: Yes.
>
> THE COURT: Were your answers to my questions truthful?
>
> GILCHRIST: Yes.
>
> THE COURT: All right. The plea will be accepted as freely, voluntarily, knowingly and intelligently made and a PSI will be ordered.

The court subsequently sentenced Gilchrist to twenty years imprisonment for assault with intent to murder, all but ten years suspended, to a concurrent term of five years for the handgun offense, and to a three-year period of supervised probation upon release. The remaining charges were *nol prossed*. Gilchrist did not seek leave to appeal. About fifteen months later, the court granted Gilchrist's motion for reconsideration of his sentence and

suspended the remaining active time on his sentence for assault with intent to murder, but left intact his mandatory five-year sentence for the handgun offense. Gilchrist did not pursue post-conviction relief.

Apparently after he had completed his sentence, Gilchrist was convicted of a crime in the United States District Court for the District of Maryland. In March 2016, he filed a petition for writ of error *coram nobis* in the Prince George's County case claiming that he was sentenced in the federal case as a "career offender" based on the Prince George's County convictions. He challenged the 1996 convictions, claiming that: (1) his *Alford* plea was not knowingly and voluntarily entered because "the court failed to advise [him] of the elements of the crime to which he was pleading"; (2) "trial counsel provided ineffective assistance of counsel"; and (3) "the factual basis was insufficient to establish guilt of the charged offense." He did not elaborate. In an affidavit attached to the petition, Gilchrist claimed that: (1) his attorney "never discussed the nature of the charges or the elements of the offenses" with him; (2) the court "never discussed with [him] the factual basis that was relied upon to support the plea"; and (3) he "did not want to plead guilty from the outset," but "trial counsel had an off the record meeting" with the prosecutor and the judge and thereafter "the court informed" him that the victim "was present to testify against him and [he] would be wise to accept the deal and still not have to admit guilt." By order dated October 11, 2016, the circuit court found that the plea was "voluntarily and knowingly made" and denied relief, without a hearing.

DISCUSSION

"A writ of error *coram nobis* 'is an extraordinary remedy' justified 'only under circumstances *compelling such action to achieve justice.*'" *Rich v. State,* 454 Md. 448, 461 (2017) (quoting *State v. Smith,* 443 Md. 572, 597 (2015) (further quotation omitted). We "review the *coram nobis* court's decision to grant or deny the petition for abuse of discretion." *Id.* at 471. We will not "disturb the *coram nobis* court's factual findings unless they are clearly erroneous," but "legal determinations shall be reviewed *de novo.*" *Id.*

When the *coram nobis* petitioner is claiming that he did not understand the offenses to which he had pleaded guilty when he entered the plea, "the only issue is whether the defendant understood the nature of the charges – **regardless** of whether the trial court could determine as much." *Smith, supra,* 443 Md. at 653 (emphasis in the original). "In other words, a defendant can successfully challenge a guilty plea on direct appeal by showing that the trial court did not follow the procedural requirements of Maryland Rule 4-242(c)," but "when challenging a guilty plea in a petition for writ of error *coram nobis*, the defendant is only entitled to relief if he or she can establish that, at the time of the plea, he or she was not, *in fact*, 'pleading voluntarily, with understanding of the nature of the charge[.]'" *Rich, supra,* 454 Md. at 463.

Here, Gilchrist maintains that his plea was not entered knowingly because the elements or nature of the charges were not explained to him on the record of the plea proceeding. The fact that the elements of the crimes were not explicitly iterated on the record, however, does not establish that Gilchrist did not, in fact, understand the nature of the offenses. The trial court specifically asked Gilchrist if his lawyer had "explained to

[him] all the elements of the offenses charged against" him and Gilchrist replied "yes." When the trial court later asked him if the answers he had given to the court's questions were "truthful," Gilchrist replied "yes." Moreover, the offenses – assault with intent to murder and the use of a handgun in the commission of a crime of violence – were self-explanatory. In addition, the State's proffer of facts in support of the plea – that Gilchrist shot the victim once in the chest and once in the back with a .32 caliber semi-automatic handgun – was sufficient to apprise Gilchrist of the nature of the offenses.

Gilchrist also asserts that the *coram nobis* court erred in denying his petition without a hearing because his trial counsel allegedly "provided ineffective assistance of counsel during the plea process for failure to advise" him of the "true nature" of the charges. He also maintains that a hearing was warranted because of his allegation that he "did not want to plead guilty from the outset," but "trial counsel had an off the record meeting" with the prosecutor and the judge and thereafter "the court informed" him that the victim "was present to testify against him and [he] would be wise to accept the deal and still not have to admit guilt." In other words, he claims that his "plea was induced by extra judicial powers." He asserts that "an evidentiary hearing" was necessary "to develop the record on these factual issues[.]"

Maryland Rule 15-1206(a) provides that the court, in its discretion may hold a hearing on a petition for writ of error *coram nobis*, but it may deny the petition without a hearing. We hold that, given Gilchrist's answers to the trial court's questions during the 1996 plea colloquy, the *coram nobis* court did not abuse its discretion in denying the petition and in doing so without a hearing. As noted, Gilchrist had assured the trial court

that his lawyer had explained to him the elements of the charges. Additionally, the plea colloquy established that Gilchrist was entering the plea voluntarily and not as a result of any "force" or intimidation. Notably, Gilchrist did not seek leave to appeal nor post-conviction relief but, instead, waited nearly twenty years to challenge his plea, and only after he was allegedly sentenced as a career offender in his federal case. In short, this is not one of those rare cases where the extraordinary remedy of *coram nobis* relief is warranted to achieve justice.

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