

Circuit Court for Baltimore County  
Case No. 03-K-07-003876

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2211

September Term, 2016

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WINDSOR W. KESSLER, III

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: January 2, 2018

\*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.

On January 10, 2008, Windsor W. Kessler, III, appellant, pled guilty in the Circuit Court for Baltimore County to one count of third-degree sexual offense. The court subsequently imposed a suspended three-year term of imprisonment, in favor of a three-year period of probation. Appellant did not seek leave to appeal nor post-conviction relief. On January 18, 2012, appellant was convicted in federal court of child pornography charges and sentenced to ten years in prison.

In June 2013, appellant filed a petition for a writ of error *coram nobis* (“first petition”), and sought to vacate the 2008 sex offense conviction because: 1) the court failed to *sua sponte* order a competency hearing based on the fact that he was taking several psychotropic medications that allegedly altered his thought processes when he entered his plea; and 2) he had received ineffective assistance of counsel because his trial counsel a) had never requested a competency hearing, and b) had failed to advise him of the rights he was giving up by pleading guilty. The circuit court denied relief, and on appeal, we affirmed that denial because he had failed to allege a significant collateral consequence of his plea. *See Kessler v. State*, No. 804, Sept. Term 2014 (filed Jan. 8, 2016) (hereinafter *Kessler I*). Although we did not address the merits, we stated that had we done so, we would have agreed with the circuit court. *Id.* at slip op. 10.

On May 11, 2016, appellant filed a second petition for a writ of error *coram nobis* (“second petition”). In this petition, he alleged: 1) that he did face a significant collateral consequence as a result of his conviction; 2) that his plea was not knowing and voluntary;

and 3) that his counsel was ineffective for reasons different from that raised in the first petition. The court denied the second petition. Appellant timely noted this appeal.<sup>1</sup>

The circuit court concluded that appellant could have raised the issues in his first petition, and, therefore, they had been waived. Furthermore, the court stated that, even if appellant had not waived these issues, he “would not prevail in this petition as a review of the record, once again, persuades this court that the proceedings at trial in this case violated none of [his] rights and accorded him due process of law in all respects.”

On appeal, appellant argues that he did not knowingly and voluntarily waive the issues he raises in his second petition. Alternatively, he contends that there were special circumstances that prevented him from raising the issues in the second petition in the first petition. Specifically, he maintains that he adequately demonstrated special circumstances because he had no access to a Maryland state law library as a federal inmate; he, therefore, “had no option” but to have a fellow inmate draft his first petition, and this inmate “made false representations” as to his understanding of Maryland criminal procedure.<sup>2</sup>

Even if we assume that the issues were not waived, the law of the case doctrine precludes relief. “Under the law of the case doctrine, ‘[n]either questions that were decided nor *questions that could have been raised* and decided on appeal can be relitigated.’” *Holloway v. State*, 232 Md. App. 272, 284 (2017) (quoting *Kline v. Kline*, 93 Md. App. 696, 700 (1992)). In *Holloway*, we affirmed the circuit court’s denial of Holloway’s second

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<sup>1</sup> Appellant filed a motion for reconsideration, which was denied.

<sup>2</sup> He also contends that he did not know of the side effects of a medication he was taking at the time of the plea proceeding.

petition for *coram nobis* relief because the issue he raised in the second petition could have been raised in his first petition. *Id.* at 284. The same is true here. In both his first and second petitions, appellant attacked the validity of his plea and the effectiveness of his trial counsel. Accordingly, the law of the case doctrine precludes further litigation of these issues. None of the exceptions to the law of the case doctrine applies. *See id.* at 285.<sup>3</sup>

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

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<sup>3</sup> Even if we were to review appellant’s allegations of special circumstances that prevented him from raising these arguments in his first petition, we would find them unavailing. As to relying on the representations of a fellow inmate, “[i]nmates must beware; they rely on legal advice offered by fellow prisoners at their own peril.” *Pigram v. Williams*, 182 F.Supp.3d 861, 865 (N.D. Ill. 2016). Regarding the potential side effects of a medication, appellant expressly stated at the plea proceeding that he was not currently taking any medication.