

Circuit Court for Prince George's County  
Case No. CT100129B

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2046

September Term, 2022

---

TERRELL SCIPIO

v.

STATE OF MARYLAND

---

Nazarian,  
Tang,  
Battaglia, Lynne A.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Nazarian, J.

---

Filed: January 3, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After entering an *Alford* plea in the Circuit Court for Prince George’s County, Terrell Scipio was convicted of two counts of first-degree assault and one count of robbery with a deadly weapon. Eleven years later, he filed a Petition for Writ of Actual Innocence under Maryland Code (2001, 2018 Repl. Vol.), § 8-301 of the Criminal Procedure Article (“CP”). The circuit court denied the petition without a hearing. On appeal, Mr. Scipio argues that the information alleged in his petition would, if proven, establish his innocence of one count of first-degree assault by clear and convincing evidence. He argues further that his other two convictions must be vacated if his petition is granted because the convictions were part of a global plea agreement. We disagree and affirm.

## I. BACKGROUND

### A. The Home Invasions.

On November 28, 2009, at approximately 4:00 a.m., two men broke into a house in College Park. The men struck the occupant of the home with a pole and a wrench, knocking him to the ground. The two men then ransacked the home, returning periodically to strike the victim again. They tied up the victim by his wrists and ankles and dragged him down to the basement. Once the attackers left, the victim was able to free himself and seek help from a neighbor.

The police were called and the victim was transported to a local hospital, where he received treatment for approximately two days. The victim was able to identify one of the attackers as Leonard Riddle, a man he knew from a prior encounter. The victim identified Mr. Scipio as the other attacker after viewing him in a photo array.

A week later, on December 5, 2009, a second home invasion occurred in Beltsville. The occupant of that home heard a command from his door to “open up” for “PG County police,” but when he opened the door, he was attacked by two men who hit him with a crowbar. The men ransacked the victim’s home, beating him repeatedly. When the attackers left, the victim sought help from a neighbor and an ambulance was called. The victim spent the next three days in the hospital.

A police investigation of the second incident developed Mr. Scipio and Mr. Riddle as suspects. Police executed a search warrant for their shared residence and found property taken from the victim’s home, including a television set, a gun, a watch, and a cellphone. Police also recovered cellphone records indicating that Mr. Scipio received a call from the tower closest to the second victim’s home on the day of the robbery. Additionally, DNA testing on the clothing Mr. Scipio was wearing when he was arrested revealed the victim’s blood on his pant leg.

**B. Procedural History.**

On January 28, 2010, Mr. Scipio was charged with twenty-six counts covering both incidents. The counts included first-degree attempted murder, first-degree assault, robbery with a dangerous weapon, and other related charges. On December 7, 2010, Mr. Scipio entered an *Alford* plea of guilty to count two (first-degree assault of the first victim), count nineteen (first-degree assault of the second victim), and count twenty-two (robbery with a

deadly weapon of the second victim).<sup>1</sup> On February 11, 2011, the court sentenced Mr. Scipio to forty years of active incarceration and five years of supervised probation.

Mr. Scipio filed a Motion for Reconsideration of Sentence on March 3, 2011 and a Motion to Correct Illegal Sentence on July 3, 2013. Both were denied. On June 13, 2018, Mr. Scipio filed a Petition for Post-Conviction Relief, which also was denied.

**C. Petition For Writ Of Actual Innocence.**

On August 3, 2022, Mr. Scipio filed a Petition for Writ of Actual Innocence and a Request for a Hearing. In his petition, Mr. Scipio asserted that newly discovered evidence demonstrated that he was not present at the November 28, 2009 home invasion. He stated that he obtained this evidence in the form of an affidavit signed by his co-defendant, Mr. Riddle, who had implicated Mr. Scipio in the robbery initially. In the affidavit, dated April 7, 2022, Mr. Riddle states he doesn't recall what he told police, but that he is sure that Mr. Scipio did not participate in the November 28, 2009 home invasion:

I was arrested in 2009 by Prince George's Police and questioned about some home invasions. I told the police about my involvement. At the time I was high on Xanax, Percocet, cocaine and marijuana and alcohol. I don't recall exactly what I told the police that day.

Terrell Scipio is my co-defendant. I am absolutely sure that he was not with me during the home invasion/robbery that took place on 11/28/2009 . . . .

---

<sup>1</sup> The State failed to assert the factual basis for count two at the plea hearing on December 7, 2010. The parties reappeared for a second plea hearing on December 10, 2010 and stated the factual basis for count two on the record then.

Mr. Scipio argued that Mr. Riddle’s statement constituted newly discovered evidence because he “had no way of knowing that his co-defendant would later come forward, admit that he lied, and clarify that [Mr. Scipio] was not present during the crime . . . .” Mr. Scipio also contended that the affidavit establishes his innocence by clear and convincing evidence because “[t]he only person who implicated [him] as an accomplice or a participant in the crime, [Mr. Riddle], is now admitting that he lied . . . .”

The State responded that Mr. Riddle’s affidavit couldn’t demonstrate by clear and convincing evidence that Mr. Scipio was innocent of the first robbery because Mr. Scipio’s presence “was established through identification by the victim.” And the State contended that the affidavit cannot establish that Mr. Scipio is innocent of the second robbery because that robbery occurred on December 5, 2009 and the affidavit addressed only the November 28, 2009 incident. The circuit court denied Mr. Scipio’s petition without a hearing, reasoning that Mr. Riddle’s affidavit did not controvert the first victim’s photo array identification of Mr. Scipio and made no mention of the second home invasion.

## II. DISCUSSION

Mr. Scipio raises one question on appeal: did the circuit court err in denying Mr. Scipio’s Petition for Writ of Actual Innocence without a hearing?<sup>2</sup> We hold that it didn’t. The information alleged in Mr. Scipio’s petition cannot establish his innocence of the first

---

<sup>2</sup> Mr. Scipio phrased his Question Presented as: “Did the Circuit Court err in denying Appellant’s Petition for Writ of Actual Innocence without a hearing?”

The State phrased its Question Presented as: “Did the circuit court properly deny Scipio’s petition for the writ of actual innocence without a hearing?”

robbery by clear and convincing evidence given the victim’s photo array identification of Mr. Scipio and the petition does not allege grounds for actual innocence of the second robbery. The circuit court denied his petition without a hearing properly.

“[T]he standard of review of a circuit court’s grant of a motion to dismiss a petition for writ of actual innocence without a hearing, pursuant to section 8-301(e)(2), is *de novo*.” *Hawes v. State*, 216 Md. App. 105, 133 (2014); *see also Keyes v. State*, 215 Md. App. 660, 669–70 (2014) (“[W]e recognize that, generally, appellate review of a circuit court’s denial of a motion for new trial is limited to whether the trial court abused its discretion but, because the issue before us is the legal sufficiency of the petition, our review is *de novo*.” (citation omitted)).

Mr. Scipio argues that the information contained in Mr. Riddle’s affidavit satisfied the pleading requirements under CP § 8-301 and that the circuit court should have granted a hearing on his petition. He maintains that Mr. Riddle’s statement constitutes “newly discovered evidence” because he only “became aware of this information twelve years after [his] plea” and he had no way of knowing that Mr. Riddle would recant his prior statement incriminating him in the November 29, 2009 home invasion. Mr. Scipio contends further that Mr. Riddle’s recantation establishes his innocence by clear and convincing evidence because Mr. Riddle was “[t]he only person who implicated [him] as an accomplice or a

participant in the crime . . . .”<sup>3</sup>

In addition, Mr. Scipio argues that if his petition is granted as to his conviction for the November 29, 2009 home invasion, the convictions for the second home invasion would be vacated because the counts were part of a global plea agreement. It is not necessary, he contends, for him to show a nexus between Mr. Riddle’s statement and the convictions for the second home invasion.

The State counters that Mr. Riddle’s affidavit could not establish Mr. Scipio’s innocence of the November 29, 2009 incident by clear and convincing evidence. It points out that the affidavit contains no details that diminish the reliability of the victim’s photo array identification of Mr. Scipio. At best, the State contends, the affidavit amounts to a mere contradiction of the victim’s identification. The State argues further that the affidavit could not establish Mr. Scipio’s innocence of the convictions relating to the second home invasion because the affidavit addresses only the first incident. In the State’s view, the fact that Mr. Scipio entered an *Alford* plea as part of a global plea agreement is not relevant. The State concludes, therefore, that Mr. Scipio failed to assert grounds upon which relief may be granted and the circuit court denied the petition without a hearing correctly.

A petition for writ of actual innocence, as authorized by CP § 8-301, “provides a defendant [with] an opportunity to seek a new trial based on newly discovered evidence

---

<sup>3</sup> Mr. Scipio appears to argue as well that he met the pleading requirements under CP § 8-301 because Mr. Riddle’s affidavit would create a substantial or significant possibility of a different result at trial. But the “substantial or significant possibility” pleading standard does not apply to convictions stemming from guilty pleas. *See* CP § 8-301(a)(1)(ii).

that speaks to his or her actual innocence . . . .” *Douglas v. State*, 423 Md. 156, 176 (2011). To prevail on a petition for actual innocence, a petitioner must satisfy three elements. *First*, the petitioner must produce newly discovered evidence that “‘speaks to’ [his] actual innocence[.]” *Faulkner v. State*, 468 Md. 418, 459 (2020) (quoting *Smith v. State*, 233 Md. App. 372, 422 (2017)); *Carver v. State*, 482 Md. 469, 490 (2022) (“The first prong limits relief to ‘a petitioner who makes a threshold showing that he or she may be actually innocent, meaning he or she did not commit the crime.’” (quoting *Faulkner*, 469 Md. at 460)). *Second*, “[the] petitioner must show that he or she could not have located the newly discovered evidence with the exercise of ‘due diligence’ by the deadline to file a motion for a new trial under Rule 4-331.”<sup>4</sup> *Faulkner*, 468 Md. at 460.

*Third*, if the petitioner’s conviction resulted from an *Alford* plea, the petitioner must show that the newly discovered evidence “establishes by clear and convincing evidence the petitioner’s actual innocence of the offense or offenses that are the subject of the

---

<sup>4</sup> Maryland Rule 4-331 establishes a one-year or post-mandate deadline for seeking a new trial based on newly discovered evidence:

(c) The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief[.]

petitioner’s motion[.]”<sup>5</sup> CP § 8-301(a)(1)(ii). “To be clear and convincing, evidence should be ‘clear’ in the sense that it is certain, plain to the understanding, and unambiguous and ‘convincing’ in the sense that it is so reasonable and persuasive as to cause one to believe it.” *Mathis v. Hargrove*, 166 Md. App. 286, 312 (2005) (quoting *Wills v. State*, 329 Md. 370, 374 n.1 (1993)); *Spengler v. Sears, Roebuck & Co.*, 163 Md. App. 220, 247 (2005) (clear and convincing means highly probable, not merely probable). When assessing the impact of the newly discovered evidence on the strength of the State’s case, the court may consider “evidence presented as part of the factual support of the plea.” CP § 8-301(f)(2)(i).

At the threshold, the petitioner bears the burden of pleading grounds for relief that can satisfy CP § 8-301. *Douglas*, 423 Md. at 187. “[A] trial court may dismiss a petition without a hearing when one was requested, pursuant to [CP] § 8-301(e)(2), only when a petitioner fails to satisfy the pleading requirement.” *Id.* at 180. The pleading requirement mandates “that a petition ‘assert’ grounds for relief; it does not require the petitioner to satisfy the burden of proving those grounds in the papers submitted.” *Id.* at 179 (quoting CP § 8-301). When determining whether the allegations, if proven, could entitle a petitioner to relief, the court must “assum[e] the facts in the light most favorable to the petitioner and accept[] all reasonable inferences that can be drawn from the petition.” *Id.* at 187.

---

<sup>5</sup> If the petitioner’s conviction resulted from a trial, the newly discovered evidence must “create[] a substantial or significant possibility that the result may have been different, as that standard has been judicially determined[.]” CP § 8-301(a)(1)(i).

**A. The Allegations In Mr. Scipio’s Petition Cannot Prove His Innocence Of The First Home Invasion By Clear And Convincing Evidence.**

We begin our analysis by assessing whether Mr. Scipio’s allegations, if proven, could establish his innocence of the November 29, 2009 home invasion by clear and convincing evidence.<sup>6</sup> Mr. Scipio argues that Mr. Riddle’s affidavit, which states that Mr. Scipio was not involved in the home invasion, is clear and convincing evidence of his innocence because Mr. Riddle was “[t]he only person who implicated [Mr. Scipio] as an accomplice or participant in the crime.” But Mr. Riddle was not the only person who implicated Mr. Scipio. The victim of the home invasion identified Mr. Scipio as one of the intruders after viewing him in a photo array. The victim’s photo array identification was put forward as part of the factual support for Mr. Scipio’s plea agreement. And, as acknowledged by Mr. Scipio’s attorney during the plea hearing, the victim would have testified that Mr. Scipio was the second participant in the home invasion had he been called as a witness.

Mr. Riddle’s affidavit does nothing to dismantle the victim’s identification of Mr. Scipio, nor does it contain any details bearing on the identification’s reliability. Even if credible, the affidavit merely contradicts the victim’s photo array identification—conflicting evidence, perhaps, but not clear and convincing evidence of innocence. To be clear and convincing, the evidence must be “unambiguous” and “so reasonable and

---

<sup>6</sup> The State does not dispute that Mr. Riddle’s affidavit “speaks to” his actual innocence and constitutes “newly discovered evidence,” so we proceed from the assumption that those two elements of CP § 8-301 have been met.

persuasive as to cause one to believe it.” *Mathis*, 166 Md. App. at 312. Viewed in the light most favorable to Mr. Scipio, the affidavit creates, at most, a potential ambiguity as to whether Mr. Scipio participated in the home invasion, which is not sufficient to satisfy the clear and convincing evidence standard under CP § 8-301.

**B. Mr. Scipio Has Not Alleged That Newly Discovered Evidence Proves His Actual Innocence Of The Second Home Invasion.**

To the extent that Mr. Scipio seeks relief under CP § 8-301 for his convictions relating to the December 5, 2009 home invasion, his petition fails altogether to plead grounds for actual innocence of those convictions.<sup>7</sup> Mr. Scipio has not argued that Mr. Riddle’s affidavit, or any other evidence, shows that he is actually innocent of the second home invasion. Instead, he asserts that “[i]t is not necessary [for him to] show a nexus between Mr. Riddle’s statement and [the convictions for the second home invasion].” He contends that if his petition is granted as to his conviction for first home invasion, the convictions for the second home invasion must be vacated because they were part of a global plea agreement.

We disagree. The purpose of CP § 8-301 is to “provide[] a defendant an opportunity to seek a new trial based on newly discovered evidence that speaks to his or her actual innocence . . . .” *Douglas*, 423 Md. at 176. The affidavit signed by Mr. Riddle is the only piece of evidence that Mr. Scipio presents in his petition, and it makes no mention of the

---

<sup>7</sup> Mr. Scipio argues that his petition for writ of actual innocence, if granted, will cause his convictions for the second home invasion (counts nineteen and twenty-two) to be vacated, but beyond that broad statement he doesn’t articulate a theory as to how the newly discovered evidence vitiates those convictions factually.

second home invasion. Even if the affidavit qualified as a basis for vacating Mr. Scipio's conviction for the first home invasion, it would not challenge the factual premise of his conviction for the second home invasion (which was supported by DNA evidence and cellphone records tying Mr. Scipio to the crime scene). To the extent that the plea agreement encompassed charges flowing from both incidents, that agreement weighed the risks and uncertainties of going to trial on all of the pending charges and resolved them globally. Although we must consider each set of circumstances, and each plea agreement, on its own terms, the newly discovered evidence here, which relates only to one set of charges, cannot logically or legally compel us to vacate the convictions and order a new trial on charges for which there is no new evidence. Under these circumstances, there is no basis to vacate Mr. Scipio's convictions for the second home invasion even in the context of his global plea agreement. We agree with the circuit court that Mr. Scipio failed to plead grounds for relief under CP § 8-301 and hold that the court denied his petition without a hearing correctly.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE'S COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**