Circuit Court for Baltimore City
Case Nos.: 19007219, 20

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2059

September Term, 2018

PERCY E. PAIR

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 1, 2019

In 1991, Percy Pair, appellant, pleaded guilty to two counts of first-degree murder and related offenses. In 2018, he filed a "Motion To Declare Guilty Plea Void And Of No Effect," citing the court's revisory power under Maryland Rule 4-331(b). He asserted that his plea "amounted to a void judgment" because the trial court had failed to inquire, on the record, whether he was entering the plea "voluntarily and freely" and the court had failed to "state on the record" that it "was satisfied" that the plea was entered "voluntarily and freely." The circuit court denied relief, noting that (1) in 2006, the post-conviction court had rejected Mr. Pair's claim that his plea was "involuntarily induced," and that his request to appeal that decision was denied by this Court; (2) Mr. Pair's motions to re-open his post-conviction proceeding were denied; and (3) Mr. Pair's 2007 motion for a new trial "on the grounds that his plea was coerced" was denied. Accordingly, the circuit court concluded that the issue Mr. Pair raised in the 2018 motion "has been fully and finally resolved." Moreover, even if not finally resolved, the circuit court determined that Mr. Pair was not entitled to relief because the record of the 1991 plea proceeding "reflects [that he] freely and voluntarily entered his plea, whether or not the judge recited magic words to that effect." Finally, the court noted that Mr. Pair had "not demonstrated any fraud, mistake, or irregularity that mandates" the vacation of his plea.

On appeal, Mr. Pair continues to maintain that his plea is "null and void" because the trial judge failed to expressly inquire whether he was entering the plea knowingly and voluntarily and, therefore, the circuit court erred in denying his Rule 4-331(b) motion. Because Mr. Pair is not entitled to the relief he seeks, we shall affirm the judgment.

Rule 4-331(b)(1) provides that the "court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial . . . in the circuit court, on motion filed within 90 days after its imposition of sentence." After 90 days, however, "the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity." *Id.* Mr. Pair filed his Rule 4-331(b) motion years after imposition of sentence in this case and, therefore, the judgment is subject to revision only in the event of "fraud, mistake, or irregularity."

In his motion, Mr. Pair did not allege fraud, nor did he establish "mistake or irregularity" in the acceptance of his plea. As this Court noted in *Minger v. State*, 157 Md. App. 157 (2004), for purposes of Rule 4-331(b), mistake and irregularity are narrowly defined terms. "The word 'mistake' . . . is 'limited to a jurisdictional error, i.e., where the court has no power to enter judgment.'" *Id.* at 171 (citations omitted). "Irregularity" means "irregularity of process or procedure," such as the failure of the clerk to notify a party of the entry of a judgment. *Id.* (citations omitted). We further explained that, "'irrregularity, in the contemplation of the Rule, usually means irregularity of process or procedure, *not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.*'" *Id.* at 175 (quoting *Weitz v. MacKenzie*, 273 Md. 628, 631 (1975) (emphasis added in *Minger*)).

Mr. Pair's assertion that the trial court erred in failing to question him specifically about the voluntariness of his plea does not allege an irregularity in the proceedings of the type contemplated by Rule 4-331(b). Mr. Pair could have challenged the court's acceptance of his plea in an application for leave to appeal, which he failed to do. As we

said in *Minger*, absent a narrow interpretation of the phrase "fraud, mistake, or irregularity," "almost no criminal conviction would be safe from belated attack." *Id.* at 172. In other words, Rule 4-331(b) is not a substitute for seeking a timely appeal following sentencing.

This Court in *Minger* also held that a defendant seeking to set aside a judgment due to "fraud, mistake, or irregularity" must "demonstrate that he acted with ordinary diligence" when filing a Rule 4-331(b) motion "outside the ninety-day limit." 157 Md. App. at 175. Mr. Pair failed to do so. In fact, his motion was silent as to why he waited 27 years to file it.

In sum, the circuit court properly denied Mr. Pair's motion for relief under Rule 4-331(b).

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