

Circuit Court for Montgomery County
Criminal Case No. 113668

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2074

September Term, 2017

FRANKLIN AJANG ENANG

v.

STATE OF MARYLAND

Reed,
Fader,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 11, 2018

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In 2010, appellant Franklin Enang (“Enang”) pleaded guilty to conspiracy to distribute marijuana. Now facing deportation as a result of the conviction, Enang seeks coram nobis relief on the grounds that his guilty plea was neither knowing nor voluntary. The Circuit Court for Montgomery County denied Enang’s petition for relief after determining his plea was valid. We affirm.

BACKGROUND & PROCEDURAL HISTORY

On January 11, 2010, Enang pleaded guilty in the Circuit Court for Montgomery County to one count of conspiracy to distribute marijuana. At the time of the plea, Enang was a 20 year-old legal permanent resident from Cameroon who had gone to high school in Montgomery County through the eleventh grade. An English-speaker with no history of mental health issues, Enang told the court that he had discussed the plea agreement with his counsel and that he understood the terms of the charge against him. During an on the record colloquy with his plea counsel, Enang added that he understood he was giving up certain rights by waiving a trial, including the right to a 12-person jury, the right to subpoena and confront witnesses, the right to seek the suppression of any statements to the police, and the right to testify (or not). As will be discussed further, during this colloquy Enang’s plea counsel used the following analogy to describe the reasonable doubt standard: “. . . and I explained to you, that’s sort of like getting married: Are you going to do it or aren’t you. That’s the type of proof that they’d have to have.” Later, when he was asked twice by plea counsel, Enang answered both times that

he understood everything that had just been explained to him. Additionally, Enang stated that he understood there could be immigration consequences as a result of the plea.

After hearing an agreed statement of facts, the circuit court sentenced Enang to 364 days, all but time served suspended. The court also sentenced him to supervised probation.

In October 2016, United States Immigration and Customs Enforcement detained Enang. Held without bond since then, he now faces deportation on account of the conspiracy conviction. Prior to being detained, Enang had been living in the United States since 2004. His parents, four sisters, and fiancée all live in the United States.

In June 2017, Enang filed a petition for writ of error coram nobis on the basis that his 2010 guilty plea was not entered knowingly or voluntarily. After holding a hearing, the coram nobis court denied the petition in a written order, determining that Enang “knowingly and intelligently waived his right to a trial” when he entered his plea. Enang timely appealed.

DISCUSSION

We review the decision to grant or deny a coram nobis petition for abuse of discretion; in doing so, we will not disturb the coram nobis court’s factual findings unless clearly erroneous, yet we review any legal determinations *de novo*. *State v. Rich*, 454 Md. 448, 471 (2017).

Here, Enang argues that his waiver of a jury trial was neither knowing nor voluntary because: (1) he was not advised at the plea hearing that a jury verdict must be

unanimous; and (2) his counsel did not accurately explain the reasonable doubt standard, thereby invalidating his waiver and plea. Unlike on direct appeal, where a defendant may challenge a guilty plea if the circuit court failed to satisfy certain procedural requirements, a defendant seeking coram nobis relief must substantively establish that a plea was neither knowing nor voluntary. *Id.* at 463-64. The burden of proof is on the petitioner, given that “a presumption of regularity attaches to the criminal case,” *State v. Smith*, 443 Md. 572, 599 (2015) (quoting *Skok v. State*, 361 Md. 52, 78-79 (2000)). As we will explain further, by not setting forth evidence to substantively show that his plea was neither knowing nor voluntary, Enang has not met the necessary burden to overcome the presumption of regularity that attaches to the plea hearing. Accordingly, the circuit court did not abuse its discretion in denying his petition.

I. Coram Nobis Relief: Generally

The writ of error coram nobis provides “a remedy for a convicted person who is not incarcerated and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds.” *Smith*, 443 Md. at 590-91 (quoting *Skok*, 361 Md. at 78) (Internal quotation marks omitted). The remedy is only available if a petitioner faces significant collateral consequences for which no other statutory or common law remedy is available, and if he or she can challenge a conviction on constitutional, jurisdictional, or fundamental grounds. *State v. Sanmartin Prado*, 448 Md. 664, 680-81 (2016) (discussing *Smith*, 443 Md. at 623-24) (Internal quotations and

citations omitted). As mentioned above, the burden of proof is on the petitioner to overcome the criminal proceeding’s presumption of regularity, and “the issue raised in a coram nobis action must not be waived or finally litigated,” *Sanmartin Prado*, 448 Md. at 681 (quoting *Smith*, 443 Md. at 623-24) (Internal citations omitted).¹

Enang faces deportation as a result of a guilty plea that he contends was constitutionally invalid. He therefore meets the threshold requirements to seek coram nobis relief. *See Skok*, 361 Md. at 80-82 (Lawful permanent resident facing deportation could challenge a guilty plea through coram nobis proceedings). Thus, our analysis will

¹ A defendant may litigate a claim for the first time in a coram nobis action “so long as she is able to rebut the presumption that she intelligently and knowingly waived the claim by failing to raise it at an earlier juncture.” *Smith*, 443 Md. at 608 (Internal quotation marks omitted). Here, Enang has not expressly set forth why he did not pursue his claims earlier, yet the State has not raised the issue and the coram nobis court did not make a determination on the matter. Moreover, despite the above-quoted language concerning waiver, the Court of Appeal’s analysis in *Smith* suggests an inclination to reach the merits of coram nobis claims. In *Smith*, when the record was “devoid of any indication, or factual finding by the coram nobis court” that the defendant had intelligently waived her claims by not pursuing earlier post-conviction relief, the Court of Appeals declared itself “satisfied, under the particular circumstances presented here, that the record itself offers the necessary rebuttal to the presumption” of waiver. *Id.* at 608-09. The Court then added: “in any event . . . we would eviscerate the beneficent purpose of [CP § 8-401] if we were to hold that a person, suddenly faced with the serious collateral consequence of removal from this country, and with sound reasons for the failure to seek relief earlier . . . is foreclosed even from *seeking* the extraordinary relief afforded by the common law remedy of coram nobis simply by having failed to pursue an earlier-available avenue of relief, the opportunity for which closed before the reason for seeking such relief became manifest.” *Id.* at 609 (Internal quotation marks and citation removed) (emphasis in original).

On the other hand, we might observe that the absence of any explanation as to why Enang did not pursue a claim sooner only buttresses a conclusion that his original plea was, in fact, knowing and voluntary.

focus on whether he has met the burden necessary to overcome the presumption that his guilty plea was in fact knowing and voluntary.

II. A Failure to Note the Jury Unanimity Requirement is Not Substantive Evidence of an Invalid Plea.

Enang first argues that his guilty plea was invalid because he was not advised at the plea hearing of the requirement, guaranteed by Article 21 of the Maryland Declaration of Rights, that jury verdicts be unanimous. However, the Court of Appeals has expressly held that “a specific in-court litany of advice with respect to the ‘unanimity’ requirement” is not required for a court to accept a defendant’s jury trial waiver. *State v. Bell*, 351 Md. 709, 730 (1998); *see also Walker v. State*, 406 Md. 369, 379-80 (2008), *superseded by rule on other grounds* (“[*Bell*’s] colloquy sufficiently ensured that the defendant knowingly waived his right to a jury trial, even though the judge did not specifically address the unanimity requirement.”). Given that a mere absence of notice regarding unanimity would not even be a reversible procedural error on direct appeal, Enang cannot simply point to it, without more, when seeking coram nobis relief as substantive proof that he entered his plea unknowingly.

III. Plea Counsel’s Reasonable Doubt Analogy Did Not Render the Plea Invalid.

Due process requires proof of guilt beyond a reasonable doubt. *Carroll v. State*, 428 Md. 679, 688 (2012); *In re Winship*, 397 U.S. 358, 364 (1970). Although “the reasonable doubt standard is an indispensable constitutionally mandated component of every criminal proceeding,” the term itself “is not so commonplace, simple, and clear that its meaning is self-evident,” *Lansdowne v. State*, 287 Md. 232, 239-40, 242 (1980).

Courts may thus attempt to explain the concept of reasonable doubt; for instance, by instructing a jury “that evidence is sufficient to remove a reasonable doubt when it convinces the judgment of an ordinarily prudent man of the truth of a proposition with such force that he would act upon that conviction without hesitation in his own most important affairs.” *Id.* at 241 (quoting *Lambert v. State*, 193 Md. 551, 560-61 (1949)). In that same vein, the Maryland Criminal Pattern Jury Instructions advise that reasonable doubt “requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs.” Maryland State Bar Association, *Maryland Criminal Pattern Jury Instructions* (2d ed. 2018), MPJI–Cr 2:02 (Presumption of Innocence and Reasonable Doubt).

Enang contends that his plea counsel inaccurately trivialized the reasonable doubt standard by analogizing it to the level of decision-making involved in deciding whether to marry. As support, Enang points to *Joyner-Pitts v. State*, 101 Md. App. 429 (1994), for the proposition that specifically comparing the reasonable doubt standard to marriage is constitutionally improper. We are not persuaded.

Joyner-Pitts is readily distinguishable from the colloquy at Enang’s plea hearing. The particular jury instruction at issue in *Joyner-Pitts* was a “rambling” affair that “aspire[d] to explain too much or insert[] too many illustrations.” *Id.* at 444. In addition to its considerable length (at least nine paragraphs analogizing the reasonable doubt standard to life within a marriage), the instruction’s tone was flippant: “It is not the duty

of the State to convince you to a mathematical certainty of any of these elements. Let's be honest about it. If nobody got married until they were convinced beyond all doubt we would all be single. Why? Because we are human beings. We always have that nagging reticence in making important decisions.” *Id.* at 444-45 (Emphasis removed). And even still, despite the tone, this Court was more concerned that it was the trial court’s “attempted elimination of ‘nagging reticence’ from the definition of reasonable doubt,” rather than any reference to marriage per se, that could have confused the jury. *Id.* at 445. Indeed, it was the instruction’s failure to ultimately distinguish “nagging reticence” from “an actual and substantial doubt” that specifically led this Court to hold that the instruction was improper. *Id.* at 447.

In contrast, Enang’s counsel’s reference to marriage during the plea hearing was: (1) a straightforward statement; (2) that omitted any whimsical flourishes; and (3) which even alluded to the fact that Enang and his counsel had previously discussed the matter: “. . . and I explained to you, that’s sort of like getting married.” Enang gave no indication that he was confused by the description, and he twice affirmed on the record at the plea hearing that he understood everything discussed during the colloquy. *See Rich v. State*, 230 Md. App. 537, 554 (2016), *aff’d*, 454 Md. 448 (2017) (“[a] presumption of regularity attaches to criminal proceedings . . . and the burden rests on the challenger to show otherwise.”). Having put forth no evidence or testimony to suggest that he was actually misled or confused by the reference to marriage, Enang has not met the burden to overcome the presumption of regularity that attaches to the proceeding.

Furthermore, as the coram nobis court noted, Enang’s reliance on *Joyner-Pitts* presupposes an equivalence between jury instructions and plea colloquies. Whether jury instructions “sufficiently protect the defendant’s rights” depends upon “whether there is a reasonable likelihood that the jury understood the instructions” in a manner that would produce an improper conviction. *Carroll*, 428 Md. at 689-90 (Internal quotations and emphasis removed). Enang’s ability to obtain coram nobis relief, on the other hand, depends upon whether he himself knew what he was doing when he pleaded guilty and waived a jury trial. Just as in *Rich*, where we held that “[i]n the absence of any evidence to the contrary, the presumption of regularity stands un rebutted,” 230 Md. App. at 554, Enang has not provided any evidence or testimony to suggest a conclusion other than that his plea was valid. Given that Enang has not met the burden to overcome the plea hearing’s presumption of regularity, *Sanmartin Prado*, 448 Md. at 680-81, the coram nobis court did not abuse its discretion when it denied his petition.

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