Circuit Court for Baltimore County
Case No: 03-K-88-004881

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2138

September Term, 2019

EARL SYLVESTER COUSINS

v.

STATE OF MARYLAND

Fader, C.J.,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2020

In 2019, the Circuit Court for Baltimore County denied a petition for writ of error *coram nobis* sought by Earl Sylvester Cousins, the appellant. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Mr. Cousins was charged in the Circuit Court for Baltimore County in a 10-count indictment with robbery with a dangerous weapon, robbery, assault, theft, and related offenses. On January 26, 1989, he entered an *Alford* plea to a single count of common law robbery.[1] The State's proffer of facts in support of the plea included the following statements:

> [O]n August 19, 1988, Mr. Charles Turnage and Keith Gilchrist were working at the Crown Station located at 1641 East Joppa Road in Baltimore County, Maryland. At 10:45 P.M. Mr. Gilchrist was entering the station building when an unknown black male placed a stainless steel handgun to his side and, along with another unknown black male, entered the building with Mr. Gilchrist.
>
> The subjects then ordered Mr. Gilchrist and Mr. Turnage to lay face down on the floor in the rear office. While the first subject pointed the gun at Mr. Gilchrist and Mr. Turnage, the other subject removed $100 in U.S. currency from the cash drawer.
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> ***
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> On August 25th, Detectives Marcin and Folio from the Baltimore County Police Department conducted photo shows with Mr. Turnage and Mr. Gilchrist, who both positively identified a photograph of Earl Cousins, the

[1] Drawing its name from *North Carolina v. Alford*, 400 U.S. 25 (1970), an *Alford* plea is "a guilty plea containing a protestation of innocence." *Marshall v. State*, 346 Md. 186, 189 n. 2 (1997) (quotation omitted). *See also* Md. Rule 4-242(c) ("The court may accept the plea of guilty even though defendant does not admit guilt.").

> man seated at trial table with counsel, as the man who took the money, not the gunman.

The court sentenced Mr. Cousins to two years' imprisonment, with credit awarded for time served. He did not seek leave to appeal, but over the ensuing years he has sought to overturn the conviction after it was used to enhance a sentence for robberies he committed thereafter.

In 1999, Mr. Cousins filed a petition for post-conviction relief, which included a challenge to the voluntariness of his plea.[2] Following a hearing on the petition, the court denied relief. The post-conviction court rejected Mr. Cousins' claim that his trial counsel had failed to inform him of the consequences of the plea and, in particular noted counsel's testimony at the post-conviction hearing that she had informed Mr. Cousins that the 1989 *Alford* plea, in the post-conviction court's words, "would constitute a predicate conviction in the event of future transgressions." This Court denied Mr. Cousins' request for leave to appeal the post-conviction court's denial of relief. *Cousins v. State*, No. 1375, Sept. Term, 2001 (filed May 23, 2002).

In August 2018, Cousins filed, as a self-represented litigant, a petition for writ of error *coram nobis*. He asserted that the trial court had erred in accepting the *Alford* plea because "he was pleading to a crime he did not commit" and because he "was never informed of the elements" of the crime of robbery. He also alleged that the 1989 conviction

[2] Although Mr. Cousins now asserts that he was not eligible for post-conviction relief in 1999 because he had completed his sentence, his counsel at the time argued to the contrary.

was one of several prior convictions that were used to enhance a sentence he received in 2016 for armed robbery, robbery, carjacking, kidnapping, and theft and, hence, he was suffering a significant collateral consequence as a result of the 1989 *Alford* plea. [3, 4]

The State opposed the petition, pointing out that the "statement of facts set out in great detail the evidence against the Defendant in sufficient detail to set forth the nature of the offense." The State also noted that Mr. Cousins had been served with the Indictment charging him with common law robbery "which specifically set forth the offense." And the State asserted that Mr. Cousins was represented in the case "by a clearly competent and experienced attorney." Finally, the State maintained that, given the passage of time and the prejudice the State would face if relief were granted, the petition was barred by laches.

By order dated October 17, 2018 and entered on the docket on October 22, 2018, the circuit court denied the request for *coram nobis* relief. The court stated that, based upon its "review of the file," Mr. Cousins had "previously raised the allegations, including ineffective assistance of counsel, in a post-conviction proceeding" and, therefore, the allegations in the petition were "previously litigated" or "waived." Without elaboration,

[3] Mr. Cousins was sentenced by the Circuit Court for Baltimore County in 2016 to a total term of life without the possibility of parole, plus 30 years. In an unreported opinion, this Court affirmed the judgments. *Cousins v. State*, No. 2204, Sept. Term, 2016 (filed October 23, 2017), *cert. denied*, 457 Md. 143 (2018).

[4] In addition to the 1989 *Alford* plea, Mr. Cousins's record includes a 1981 conviction (following a guilty plea) to armed robbery in the Circuit Court for Baltimore City and a 1990 conviction for armed robbery in the Circuit Court for Baltimore County.

the court also found that Mr. Cousins "entered into an Alford plea knowingly and voluntarily." Mr. Cousins did not appeal the ruling.

Months later, on June 13, 2019, Mr. Cousins filed a pleading he captioned "Petition for Resubmitting a Writ of Error Coram Nobis and Requesting a Hearing." He stated that his petition had been denied on October 22, 2018 without a hearing and that it was based in part on a post-conviction decision that was "not proper" because he had not been eligible for post-conviction relief when the post-conviction court considered the matter. He claimed, therefore, that the post-conviction proceedings should be disregarded and, hence, his allegations of error had not been previously litigated or waived. And he maintained that the October 22nd decision failed to address his contention that his *Alford* plea was defective because "the record does not reflect that his plea was knowing and voluntarily made" because he was never advised of the nature or elements of robbery and of the fact that the robbery conviction could be used to enhance a future sentence in the event he committed more crimes. In essence, this pleading was an untimely motion for reconsideration or to alter or revise the 2018 judgment denying *coram nobis* relief.[5] *See* Md. Rule 2-534 (authorizing a court to amend or alter the judgment upon motion "filed within ten days after entry of judgment"); Rule 2-535 (authorizing a court to "exercise revisory power and control over the judgment" upon motion "filed within 30 days after entry of the judgment").

[5] *Coram nobis* is a "civil matter, independent of the underlying action from which it arose[.]" *Bereska v. State*, 194 Md. App. 664, 683 (2010).

The State opposed the petition, noting that a court is not required to hold a hearing on a petition for writ of error *coram nobis*. The State also reiterated its position that "the crime of robbery is simple to understand" and would have been readily discernible from the circumstances, including the Indictment and the State's proffer of facts given in support of the plea.

Mr. Cousins then filed a pleading he captioned "Motion to Supplement Petition for Writ of Error Coram Nobis and Request for a Hearing."[6] Once again, he attacked the validity of his plea on the ground that it was not entered knowingly and voluntarily. Specifically, he claimed that he had not been "fully and/or properly advised of the consequences" of the plea; he was not advised of the maximum penalty for robbery; the court erred in accepting the plea "without identifying or discussing the nature and elements of robbery"; and, although he had answered "no" when asked during the plea colloquy whether he had ever been in a mental institution or been seen by a psychiatrist, in fact, he had been previously arrested for robbery and pled guilty to that offense in 1981 in the Circuit Court for Baltimore City after spending 33 days "at Perkins." Mr. Cousins attached to the motion a copy of the transcript from a 1981 plea hearing in Baltimore City where he pled guilty to robbery with a dangerous weapon.

By order dated October 23, 2019, and entered on the docket on October 29, 2019, the court denied the "Petition for Resubmitting a Writ of Error Coram Nobis." The court found that, "despite the fact that it did not previously address the knowing and voluntary

[6] Duplicate copies of the "Motion to Supplement Petition for Writ of Error Coram Nobis and Request for Hearing" were filed on October 24 and 28, 2019.

nature of the Petitioner's plea, as to the nature and elements of the charge[,] in its October 17, 2018 ruling [docketed on October 22, 2018], the Petitioner did, in fact, plead guilty with an[] understanding of the nature and elements of the charge of Robbery." The court further found that a hearing on the petition was not required. On November 8, 2019, Mr. Cousins filed a notice of appeal seeking review of the "Order of the Honorable Judge John J. Nagle III dated October 23, 2019."[7]

By order dated November 22, 2019, and entered on the docket on November 25, 2019, the court denied Mr. Cousins's "Motion to Supplement Petition for Writ of Error Coram Nobis and Request for Hearing." Mr. Cousins did not appeal that ruling.

DISCUSSION

"*Coram nobis* is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists." *State v. Smith*, 443 Md. 572, 623 (2015). Relief is "justified 'only under circumstances *compelling such action to achieve justice*.'" *State v. Rich,* 454 Md. 448, 461 (2017) (quoting *Smith,* 443 Md. at 597) (further quotation omitted). To be eligible for the writ, a petitioner must meet certain requirements, including that the petitioner is "suffering or facing significant collateral consequences" because of a conviction which can be "'legitimately'" challenged "'on constitutional or fundamental grounds.'" *Smith,* 443 Md.

[7] The date of a judgment, regardless of the date an order was signed, is the date the clerk enters the judgment on the docket. *See* Md. Rule 2-601(d); Rule 8-202(f). Although Mr. Cousins refers to the "October 23, 2019" ruling, it is clear that he sought appellate review of the October 29, 2019 judgment – the date the order, although signed on October 23rd, was entered on the docket.

at 623-24 (quoting *Skok v. State*, 361 Md. 52, 78-79 (2000)). The writ is intended to provide a means to overturn an otherwise final and unchallengeable conviction "'in order to remove these consequences.'" *Skok*, 361 Md. at 76 (quoting 3 Wright, *Federal Practice and Procedure Criminal 2d.* § 592, at 429-32 (1982)).

We review the circuit court's ultimate decision to grant or deny a petition for *coram nobis* relief for an abuse of discretion. *Rich*, 454 Md. at 471. In doing so, we will not "disturb the *coram nobis* court's factual findings unless they are clearly erroneous[.]" *Id.* "[L]egal determinations," however, are "reviewed de novo." *Id.*

Given the procedural history set forth above, the only judgment properly before this Court for appellate review is the order of October 29, 2019 (dated October 23, 2019). In his brief, however, Mr. Cousins asserts that the court erred or abused its discretion in its "ruling on October 22, 2018." He does not address the October 2019 order. He simply mentions at the end of his brief that he had filed "a Resubmit Petition as well as a Supplemental Petition" and the court failed to rule on the "Supplemental Petition." In fact, as noted above, the circuit court denied both of his 2019 petitions and the only notice of appeal that he filed was, in words he included on that notice, an appeal of the "Order of the Honorable Judge John J. Nagle III dated October 23, 2019." Because the 2018 order is not before us, we shall not address it. *See* Rule 8-202(a) ("[T]he notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.").

The 2019 order stated, in its entirety:

> Having read and considered the Petition for Resubmitting a Writ of Error *Coram Nobis* and the State's Answer thereto, the Court finds that despite the fact that it did not previously address the knowing and voluntary

> nature of the Petitioner's plea, as to the nature and elements of the charge in its October 17, 2018 ruling, the Petitioner did, in fact plead guilty with an understanding of the nature and elements of the charge of Robbery.
>
> Because a hearing is not required for the Petition, pursuant to Maryland Rule 15-1206(a), it is accordingly denied on this 23rd day of October, 2019.

In short, the court made two findings: (1) Mr. Cousins entered the plea with an understanding of the nature of the offense of robbery and (2) a hearing on his petition for writ of error *coram nobis* was not required. We perceive no error in either finding.

First, to find that Mr. Cousins did not understand the nature of the offense of robbery strains credibility. As the State points out, robbery is a crime readily understandable on its face. *See State v. Daughtry,* 419 Md. 35, 72 (2011) (noting that some offenses are so simple in meaning that a layperson is expected to understand it). Also, as the State further points out, the Initial Appearance Report reflects that, when he was presented in court on September 22, 1988, Mr. Cousins was advised of each offense he was charged with and the "allowable penalties" and was given a copy of the charging document. Moreover, by his own admission, in 1981 – prior to the 1989 *Alford* plea at issue here – Mr. Cousins pled guilty to armed robbery in the Circuit Court for Baltimore City. Mr. Cousins filed a copy of the 1981 plea hearing transcript with the circuit court as support for his request for *coram nobis* relief. The 1981 transcript reflects that in the Baltimore City proceeding the court

explained to Mr. Cousins the offenses of robbery and armed robbery and Mr. Cousins advised the court that he understood the nature of those crimes.[8]

Second, the circuit court correctly found that Rule 15-1206(a) does not mandate a hearing on a petition for writ of error *coram nobis* when relief is denied. *See* Rule 15-1206(a) ("The court, in its discretion, may hold a hearing on the petition. The court may deny the petition without a hearing but may grant the petition only if a hearing is held."). Accordingly, we hold that the circuit court did not abuse its discretion in denying Mr. Cousins's "Petition for Resubmitting a Writ of Error Coram Nobis."

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

[8] In *Smith v. State*, 443 Md. 572, 654 (2015), a majority of the Court of Appeals held that, when determining whether a guilty plea was entered knowingly and voluntarily when the validity of the plea is later challenged in a petition for *coram nobis* relief, a court is not bound by the four corners of the plea proceeding but may consider evidence outside that record. The Court pointed out that, "a *coram nobis* proceeding's purpose is not to determine based on the record whether the trial court erred at the time of the guilty plea, but instead to determine whether a petitioner indeed knowingly and voluntarily pled guilty." *Id.*