

Circuit Court for Montgomery County
Case No. 135771C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2352

September Term, 2019

MICHAEL BRADFORD SIMONS

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 10, 2021

*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.

Convicted by a jury in the Circuit Court for Montgomery County of first degree assault and use of a handgun in the commission of a crime of violence, Michael Bradford Simons, appellant, contends that the evidence is insufficient to sustain the convictions “because the evidence showed that he was acting in self-defense.” Acknowledging that defense counsel “submitted on the sufficiency of the evidence as to [the offenses] at the close of the prosecution’s case before . . . introduc[ing] evidence of self-defense,” Mr. Simons, relying on *Testerman v. State*, 170 Md. App. 324 (2006), asks us to conclude that defense counsel provided ineffective assistance. We decline to do so. The Court of Appeals has stated that “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel’s ineffectiveness.” *Mosley v. State*, 378 Md. 548, 560 (2003) (citations and footnote omitted). Here, as in *Mosley*, the record does not reveal why defense counsel failed to raise the contention in his initial motion for judgment of acquittal. A post-conviction proceeding will allow for the introduction of testimony and evidence, and fact-finding, directly related to Mr. Simons’s contention, and hence, the contention should be addressed in such a proceeding.

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