

Circuit Court for Montgomery County  
Case No: 125462C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2649

September Term, 2019

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NDOKLEY P. ENOW

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: April 2, 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.

In 2015, Ndokley P. Enow, appellant, appeared in the Circuit Court for Montgomery County and, pursuant to a plea agreement with the State, pleaded guilty to solicitation to commit first-degree murder. In accordance with that agreement, the court sentenced Mr. Enow to 40 years’ imprisonment, all but 20 years suspended, and to a five-year term of supervised probation upon release.

In 2019, Mr. Enow, representing himself, filed a petition for writ of actual innocence, which he supplemented multiple times. (We shall refer to the petition and its supplements collectively as the “petition.”) The State opposed the petition, noting that it failed to allege *any* “newly discovered evidence” and asserted that the claims raised were “basically recycled from Enow’s previously filed petition for post-conviction relief and petition for writ of error coram nobis,” petitions that had been denied. By order dated February 7, 2020, the circuit court denied relief, without a hearing. Mr. Enow appealed that ruling and presents 22 questions for this Court’s review.<sup>1</sup> The only issue properly before us, however, is whether the circuit court erred in denying relief without a hearing. For the reasons to be discussed, we shall affirm the judgment.

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<sup>1</sup> Many of the “questions presented” relate to the validity of Mr. Enow’s guilty plea and/or allege claims of ineffectiveness of trial counsel. We note that Mr. Enow’s application for leave to appeal following the entry of his guilty plea was denied by this Court, *Enow v. State*, No. 178, Sept. Term. 2015 (filed August 12, 2015), as was his application for leave to appeal from the circuit court’s denial of his petition for post-conviction relief. *Enow v. State*, No. 2510, Sept. Term, 2016 (filed June 23, 2017).

## **BACKGROUND**

### Plea Hearing

As related at the January 9, 2015 plea hearing, Mr. Enow was arrested and charged with solicitation to commit first-degree murder after a Montgomery County police detective was alerted to the fact that on June 3, 2014 Mr. Enow had approached a mechanic and offered him \$1,000 to kill the mother of his child. The mechanic, who unbeknownst to Mr. Enow was a police informant, declined the job but told Mr. Enow he could put him in touch with someone who could do it. Mr. Enow gave the informant photographs of the intended victim, her name, and her address. The informant then alerted the police who determined that Mr. Enow had previously been convicted of domestic violence against the intended victim.

On June 5<sup>th</sup>, the informant gave Mr. Enow the contact information of a “hitman,” who was actually an undercover police officer posing as a hitman. Mr. Enow called the officer several times and they arranged to meet in a Silver Spring parking lot. During a conversation in the undercover officer’s vehicle, which was recorded on audio and video devices, Mr. Enow asked the officer to kill the woman in exchange for \$1,000. When the officer asked what the plan was, Mr. Enow said it was “to take this girl out” by either putting her “six feet under” or putting her in a wheelchair and leaving her without the ability to ever talk or walk again. While they were conversing, the officer drove to the intended victim’s neighborhood so that Mr. Enow could show the officer where she lived. Mr. Enow gave the officer photos of the woman and \$300 in cash as a deposit.

A short time after Mr. Enow left the undercover officer, he was arrested. During an interview with the police following his arrest, Mr. Enow admitted that he had met with a person and asked him to kill or severely injure the woman and had given a deposit for the job. He was ultimately charged pursuant to a two-count indictment with solicitation of first-degree murder and solicitation of first-degree assault.

At the plea hearing, the State submitted a disc of the audio and video recordings of the meeting between Mr. Enow and the undercover officer. The defense did not object. After the court accepted the plea to solicitation to commit first-degree murder, the State nol prossed the remaining count.

#### Petition for Writ of Actual Innocence

In his petition, Mr. Enow attacked the validity of his guilty plea, argued that his trial counsel rendered ineffective assistance, asserted that the trial court had lacked jurisdiction, and claimed that the indictment had failed to charge an offense. He also challenged the legality of the wiretap and “sting operation” and claimed that his arrest and indictment were illegal. Notably, he did not rely on any “newly discovered evidence” nor assert that he was actually innocent.

In an order filed on February 7, 2020, the court noted that it had reviewed the petition (and each supplement thereto) and the State’s answers.<sup>2</sup> The court denied relief

due to Defendant’s failure to allege facts supporting allegations rising to the level of newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial, that the newly discovered evidence creates a substantial possibility that the result may have been

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<sup>2</sup> The same judge that presided over the plea and sentencing hearings ruled on the petition for writ of actual innocence.

different, or that the conviction sought to be vacated is based on an offense that the petitioner did not commit. *See* Maryland Rule 4-332(d)(6-9). Further, Defendant has failed to establish his actual innocence by clear and convincing evidence. *See* Md. Code Ann., Crim. Proc. § 8-301(a)(1)(ii).

### DISCUSSION

On appeal, the only relevant argument Mr. Enow makes is that the circuit court erred in denying his petition without a hearing. The State asserts that the court did not err in ruling without a hearing because Mr. Enow failed to identify any “newly discovered evidence” to support a claim of actual innocence. We agree with the State.

A court may dismiss a petition for writ of actual innocence without a hearing “if the court finds that the petition fails to assert grounds on which relief may be granted.” Md. Code Ann., Crim. Proc. § 8-301(e)(2). *See also* Rule 4-332(i)(1). “The standard of review is *de novo* when appellate courts consider the legal sufficiency of a petition for writ of actual innocence that was denied without a hearing.” *State v. Ebb*, 452 Md. 634, 643 (2017).

When filing a petition for writ of actual innocence, the petitioner must, among other things, state:

- 6.) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;
- 7.) a description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier . . .  
[;]
- 8.) that the newly discovered evidence creates a substantial or significant possibility, as that standard has been judicially determined, that the result may have been different, and the basis for that statement;

9.) that the conviction sought to be vacated is based on an offense that the petitioner did not commit[.]

Rule 4-322(d).

“To qualify as ‘newly discovered,’ evidence must not have been discovered, or been discoverable by the exercise of due diligence,” in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998); *see also* Rule 4-332(d)(6). As this Court explained in *Smith v. State*, 233 Md. App. 372, 416 (2017), the “requirement, that the evidence could not, with due diligence, have been discovered in time to move for a new trial, is ‘a threshold question.’” (quoting *Argyrou*, 349 Md. at 604). And “‘until there is a finding of newly discovered evidence that could not have been discovered by due diligence, no relief is available, ‘no matter how compelling the cry of outraged justice may be.’” *Id.* (quoting *Argyrou*, 349 Md. at 602 (further quotation omitted)).

Here, Mr. Enow made a variety of claims attacking his conviction. None, however, are based on “newly discovered evidence” that is in any way exculpatory or even hints at his innocence. Accordingly, we hold that the circuit court did not err in denying his petition without a hearing.

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