

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1780

September Term, 2015

VERNON ALLEN COLLINS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: January 12, 2017

* 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.

Vernon Allen Collins was convicted in the Circuit Court for Anne Arundel County of assault with intent to murder and sentenced to five years' imprisonment. Mr. Collins did not appeal. Almost forty years later, Mr. Collins filed, withdrew without prejudice, and then filed a new petition for writ of *coram nobis*. The circuit court denied Mr. Collins's petition, and Mr. Collins appeals, contending that the circuit court erred and abused its discretion in denying his petition. We vacate the circuit court's order and remand.

I. BACKGROUND

On October 19, 1972, Mr. Collins was convicted of assault with intent to murder and sentenced that same day. He did not appeal his conviction.

On July 6, 2012, nearly forty years later, Mr. Collins filed a petition for writ of *coram nobis*, challenging the alleged unconstitutionality of advisory jury instructions. *See Unger v. State*, 427 Md. 383 (2012). He withdrew that petition without prejudice on December 2, 2013, and filed a new petition on March 3, 2015. The State filed a two-page Answer to the Petition on May 7, 2015 that listed a series of defenses. Paragraph 2 contained the State's sole mention of the defense of laches and stated, in its entirety, "The allegations contained in the Petition for Writ of Error *Coram Nobis* have been finally litigated, waived in prior proceedings or are barred by laches." In an order dated August 31, 2015, the circuit court denied the petition, finding it "barred by the doctrine of laches as there has been an unreasonable delay in the Petitioner's assertion of rights and further the delay has resulted in prejudice to the opposing party due to Petitioner's inability to obtain the transcript of his plea hearing." Mr. Collins noted a timely appeal.

II. DISCUSSION

Mr. Collins challenges the circuit court’s denial of his petition for *coram nobis* under four alternative theories.¹ *First*, he argues that the circuit court erred or abused its discretion in finding—without a hearing—that his petition was barred by laches. *Second*, Mr. Collins argues that under *Arey v. State*, 400 Md. 491 (2007), his request for *coram nobis* relief should not have been denied in the absence of any allegation by the State that the transcript of his plea no longer exists. *Third*, Mr. Collins contends that, even if the trial

¹ Mr. Collins presented the questions in his brief as follows:

(a). Did The Circuit Court Err Or Abuse Its Discretion In Denying Coram Nobis Relief Under The Doctrine Of Laches Without Holding A Hearing To Determine Whether The State Has Met The Two Prong Preponderance Of The Evidence Burden Of Proof To Show There Was An Unreasonable Delay And That The Delay Resulted In Prejudice To The State?

(b). Did Alternatively The Circuit Court Err Or Abuse Its Discretion Under Arey In Sua Sponte Determining Without Any Specified Allegation Or Sworn Affidavit From The State Alleging The Trial Record Of Collins’ Plea No Longer Exist To Deny Coram Nobis Relief Under The Doctrine Of Laches?

(c). Did Alternatively The Circuit Court Err Or Abuse Its Discretion In Denying Coram Nobis Relief Since The 1972 Conviction Unconstitutional Under Unger Effected The Integrity Of Collins Right To A Fair Trial The Doctrine Of Laches Defense Could Not Be Invoked By The State Even If The State Would Be Unable To Retry The Case?

(d). Did Alternatively The Circuit Court Err Or Abuse Its Discretion In Denying Coram Nobis Relief Given The Unger Claim Could Have Been Adjudicated Without The Transcripts By Reconstructing The Trial Record Through Use Of The 1972 Circuit Court Docket Entries, Collins’ Affidavit, And The 1972 MD. Rules of Criminal Procedure Rule 756?

transcript no longer exists, the State has not suffered any prejudice. *Fourth*, Mr. Collins argues that, even without the trial transcript, the circuit court could have reconstructed the trial record through the use of the 1972 circuit court docket entries, Mr. Collins’s affidavit, and Rule 756 of the 1972 Maryland Rules of Criminal Procedure. The State responds that the circuit court properly denied Mr. Collins’s petition based on the doctrine of laches.²

We agree with Mr. Collins that the circuit court should have held a hearing before determining that his petition was barred by laches, and we don’t need to address his other arguments. It’s true that, unlike a granted petition, a denied petition does not require a hearing. *Moguel v. State*, 184 Md. App. 465, 480 (2009); *see also* Md. Rule 15-1206(a) (providing that a *coram nobis* court, “in its discretion, may hold a hearing on the petition” and that it “may deny the petition without a hearing but may grant the petition only if a hearing is held”). But a hearing generally is necessary to determine whether the State has met its burden of showing that the doctrine of laches applies (*i.e.*, that “there [was] an unnecessary delay in the assertion of [appellant’s] rights and that [the] delay result[ed] in prejudice to the [State]”). *Liddy v. Lamone*, 398 Md. 233, 244 (2007); *see Liddy*, 398 Md.

² The State submitted a Motion to Dismiss with its brief, moving for the dismissal of Mr. Collins’s appeal pursuant to Maryland Rule 8-501 because Mr. Collins failed to file a Record Extract containing “all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal.” In particular, the State takes issue with Mr. Collins’s failure to include a copy of his petition for writ of *coram nobis*, asserting that such failure “impedes the State’s ability to respond to [Mr.] Collins’s complaint and impairs this Court in addressing [Mr.] Collins’s appeal.” Because Mr. Collins’s petition is available on the Maryland Electronic Courts case management system, we deny the State’s Motion to Dismiss.

at 245 (observing that “[w]hether the elements of laches have been established is one of fact”).

We start with the fact that laches is both an affirmative defense and an “equitable defense.” *Jones v. State*, 445 Md. 324, 357 (2015) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 604 (2014)). The party asserting laches—in this instance, the State—bears the burden of proving laches by a preponderance of the evidence. *Id.* at 339. “In assessing whether the party unreasonably delayed before filing, the court first ascertains the length of the delay, then decides whether the delay was unreasonable.” *Id.* at 343–44. “[F]or purposes of the doctrine of laches, delay begins when a petitioner knew or should have known of the facts underlying the alleged error— . . . the date of the guilty plea proceeding.” *Id.* at 344. Whether a delay is unreasonable “depends on the case’s particular circumstances and courts may consider factors such as, but not limited to, the length of the delay, the reason for the delay, the incentive to challenge the prior conviction, and the basis for the coram nobis petition.” *Id.* at 356–57. “[I]t is appropriate to consider a petitioner’s motivation for not challenging an alleged error until doing so suits the petitioner’s interests.” *Id.* at 347 (stating that it would be absurd to reward petitioners who commit a new offense by allowing them to refrain from challenging their old convictions until doing so suits their interests of avoiding a harsher penalty for having committed the new offense). “The longer the petitioner delays in raising the allegation of error, the more likely it will be that memories will have faded and evidence will have disappeared, thus impairing the State’s ability to defend against the allegation of error, the

trial court’s ability to accurately resolve the allegation of error, and the State’s ability to re prosecute if needed.” *Id.* at 349. “Prejudice is generally held to be anything that places the [opposing party] in a less favorable position,” *id.* at 357 (quoting *State Ctr.*, 438 Md. at 586 (citations and internal quotations omitted)), including the State’s ability both to defend against the petitioner’s filing and, if relief is granted, to try the petitioner anew. *Id.* And “[a]n appellate court reviews without deference a trial court’s conclusion as to whether the doctrine of laches bars a party’s filing.” *Id.* at 337.

Here, the circuit court denied Mr. Collins’s petition based on a finding that it “[wa]s barred by the doctrine of laches as there has been unreasonable delay in [Mr. Collins]’s assertion of rights and further the delay has resulted in prejudice to the opposing party due to [his] inability to obtain the transcript of his plea hearing.” (citing *Moguel*, 184 Md. App. at 478). But the State’s Answer to the petition—its only filing before the court denied the petition—simply mentions laches in a list of defenses, in the same manner as an answer in a civil case lists affirmative defenses for the purpose of preserving them. The Answer contains no allegations or evidence on which the court could have found an unreasonable delay or prejudice resulting from Mr. Collins’s petition. The court noted the absence of a transcript, but did not have a record on which to find unreasonable delay or prejudice, and should not have presumed either from the absence of a transcript alone.³

³ Mr. Collins attempts to distinguish this case from *Moguel* by arguing “the Circuit Court actually held a hearing solely to determine whether the State could prove by a preponderance of the evidence that *Moguel*’s waiting to challeng[e] the legality of his guilty plea 23 years later based on the failure of the trial court to advi[s]e him of the

We don't mean to overstate the likelihood that Mr. Collins can succeed in this case, either in defeating the State's laches defense or on the merits. It may well be that the passage of time and the absence of a transcript make it impossible for the State to defend his petition on the merits or, even if he gets past laches, for the court to assess the jury instructions that were actually given at his trial. *See Calhoun-El v. State*, ___ Md. App. ___, No. 2768, Sept. Term 2012 (filed December 21, 2016), slip op. at 5–11 (tracing the history of appellants' right to contest advisory jury instructions in Maryland). But that all said, the State had not, at the time the court denied the petition on laches grounds, put before the court a record that could have supported the prerequisite findings. For that reason, we vacate the judgment and remand for further proceedings on laches or the merits or both, as the court finds appropriate.

**STATE'S MOTION TO DISMISS DENIED.
ORDER OF THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY DENYING
APPELLANT'S CORAM NOBIS PETITION
VACATED AND CASE REMANDED TO
THAT COURT FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS
OPINION. ANNE ARUNDEL COUNTY TO
PAY COSTS.**

consequences of being subject to deportation before accepting his plea of guilty was unreasonable and result[ed] in[] prejudice to the State.” (Footnote omitted.)