UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2472

September Term, 2015

MICHAEL K. COOPER

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 9, 2017

In 2000, Michael Cooper, appellant, was convicted of second degree assault, in the Circuit Court for Baltimore County, following the entry of a not guilty plea upon an agreed statement of facts. In 2015, he filed a petition for writ of error coram nobis challenging that conviction on the grounds that his not guilty plea was the functional equivalent of a guilty plea and that the guilty plea was not knowing and voluntary because the trial court failed to comply with Maryland Rule 4-242(c).

Following a hearing, the circuit court found that Cooper had entered the functional equivalent of a guilty plea and that the trial court had failed to make an on the record inquiry to determine whether he understood the elements of the offense. It nevertheless denied Cooper's petition, finding that his plea was knowing and voluntary because second degree assault was an easily understandable crime and the prosecutor had clearly explained the facts underlying the charge in the agreed upon statement of facts. Cooper now appeals raising a single issue: Whether the circuit court erred in denying his petition for writ of error coram nobis? For the reasons that follow, we affirm.

As an initial matter, we agree with the State that the circuit court erred in finding that Cooper's plea was the functional equivalent of a guilty plea.[1] Ordinarily, a not guilty plea upon an agreed statement of facts is not the functional equivalent of a guilty plea, *see Ingersoll v. State*, 65 Md. App. 753, 761 (1986), and, based on our review of the record,

[1] Cooper contends that we should not consider this issue because the State did not challenge his claim that his not guilty plea was the functional equivalent of a guilty plea in the circuit court. However, because this issue was raised by Cooper in his petition and decided by the circuit court, we may consider it on appeal. *See* Maryland Rule 8-131(a) (stating that this Court can consider an issue if it "plainly appears by the record to have been raised in or decided by the trial court").

there is no reason to deviate from that general rule in this case. *Compare Jones v. State*, 77 Md. App. 193 (1988) (holding that the defendant's not guilty plea upon an agreed statement of facts was not the functional equivalent of a guilty plea even though: (1) the State had agreed to nol pros two charges following the plea; (2) the defendant acknowledged his agreement with the statement of facts; and (3) the defendant's trial counsel failed to make a motion for judgment of acquittal) *with State v. Sanmartin Prado*, 448 Md. 664, 707-710 (2016) (finding a not guilty plea to be the functional equivalent of a guilty plea where the State agreed that appellant would receive a specific sentence "upon a finding of guilt," and the trial court informed appellant that he was waiving his right to both a jury trial and "a court trial or a bench trial"); *Sutton v. State*, 289 Md. 359, 366 (1981) (finding the functional equivalent of a guilty plea where the plea was entered at the direction of the trial court and the appellant was informed that she would be placed on probation prior to the plea being entered). Because Cooper did not plead guilty, Maryland Rule 4-242(c) did not apply in his case.

Moreover, even if Cooper's plea was the functional equivalent of a guilty plea, the circuit court did not err in finding that he understood the nature and elements of second degree assault and, therefore, that he entered the plea knowingly and voluntarily. A coram nobis proceeding, reviewing a claim that a guilty plea was not knowing and voluntary, takes into account the totality of the circumstances, and the issue for the coram nobis court to decide is not "whether the trial court erred at the time of the guilty plea, but instead [, . . .] whether a petitioner indeed knowingly and voluntarily pled guilty." *State v. Smith*, 443 Md. 572, 654 (2015). That determination is made on a case-by-case basis, taking into

account "the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court's acceptance of the plea." *State v. Daughtry*, 419 Md. 35, 72 (2011) (citation omitted).

In *Rich v. State*, __ Md. App. __ (2016) (No. 601, September Term 2010) (filed November 1, 2016), this Court held that the defendant's guilty plea to second degree assault was entered knowingly and voluntarily, despite the trial court's failure to spell out the elements of the charge or to determine whether he had been advised of the elements of the charge by his trial counsel. In doing so, we found that (1) second degree assault was not a complex crime and (2) based on the personal characteristics of the appellant, he "was capable of understanding the nature of the charge from the statement of facts, in which the prosecutor explained that [the appellant] was being charged because he had punched and pushed two police officers." *Id*. at ___, slip op. at 7-8.

Here, Cooper was also convicted of second degree assault based on a completed battery, which *Rich* held is not a complex crime, and, in the agreed upon statement of facts, the prosecutor likewise indicated that the charge was based on appellant pushing and punching a police officer. Moreover, nothing in the record demonstrates that appellant would have lacked the mental capacity to understand the nature of charge after hearing the

agreed the statement of facts.[2] Consequently, the circuit court did not err in denying Cooper's petition for writ of error coram nobis.

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

[2] In fact, we note that appellant has never given a sworn statement, either at the hearing on his petition or via affidavit, asserting that he did not understand the nature and elements of second degree assault.