

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 359

September Term, 2016

STATE OF MARYLAND

v.

KEVIN STEWART

Berger,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 18, 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.

Following a hearing, the Circuit Court for Prince George’s County granted appellee Kevin Stewart’s petition for post-conviction relief and ordered a new trial. We granted the State’s application for leave to appeal, and the State presents the following question: Did the post-conviction court err in concluding that trial counsel provided ineffective assistance in failing to object, during the prosecutor’s closing argument, to comments relating to the credibility of a witness? Because the post-conviction court failed to rule on each ground raised by appellee as required by Maryland Rule 4-407(a), we shall remand this case to the post-conviction court for further proceedings.

Because we find it necessary to remand this case, we shall not discuss the lurid details of the events of August 31, 1990, which led to appellee’s convictions. It is sufficient for our purposes that a jury convicted appellee of two counts of first-degree rape, two counts of second-degree rape, kidnapping, and use of a handgun in the commission of a felony. On December 3, 1991, after merging some of appellee’s convictions, the trial court sentenced appellee to serve sixty years of imprisonment. On appellee’s direct appeal, a panel of this Court affirmed his convictions in an unreported opinion. *Stewart v. State*, No. 1894, Sept. Term 1991 (filed Sept. 29, 1992).

On April 21, 2010, appellee filed a petition for post-conviction relief. The post-conviction petition was heard in the circuit court on May 5, 2015. On March 15, 2016, the post-conviction court issued its Statement of Reasons and Order of Court (“Statement of Reasons”). In its Statement of Reasons, the court correctly identified the issues raised by appellee in his post-conviction petition:

- 1) Whether trial counsel rendered ineffective assistance of counsel by failing to object to the prosecutor’s alleged impermissible vouching.
- 2) Whether trial counsel rendered ineffective assistance of counsel by defining reasonable doubt in such a fashion as to allegedly usurp the court’s function and lower the prosecutor’s burden of proof.
- 3) Whether trial counsel rendered ineffective assistance of counsel by failing to object to the prosecutor’s alleged inflammation of the jury’s passion.
- 4) Whether trial counsel rendered ineffective assistance of counsel by failing to object when the prosecutor argued in his closing that [appellee] had not provided any evidence.
- 5) Whether trial counsel rendered ineffective assistance of counsel by failing to admit into evidence the prior statements of [appellee] and the victim.
- 6) Whether trial counsel rendered ineffective assistance of counsel by failing to secure [appellee’s] right of confrontation of the DNA and FBI reporters.
- 7) Whether the cumulative effect of trial counsel’s errors rendered his assistance ineffective.
- 8) Whether the state manufactured false evidence and/or knowingly suborned perjured testimony.¹

The post-conviction court only ruled on the first assigned error related to impermissible vouching by the State during closing argument. Specifically, the court found that appellee’s trial counsel had rendered ineffective assistance by failing to object to the prosecutor’s “vouching” for a witness during closing argument. The post-conviction court determined that the following excerpts from the prosecutor’s closing argument constituted impermissible vouching:

¹ We note that appellee presented nine allegations of error in his post-conviction petition; the post-conviction court combined appellee’s issues numbered II. and III. as number eight in its Statement of Reasons.

[The victim] got up there and told you everything, told it absolutely like it is. Actually, from my standpoint, she was a dream witness. I did not have to lead her. I asked the general who, what, where, why, when questions . . . Ladies and gentlemen of the jury, she is traumatized. She is still traumatized over a year after this incident happened. There is no one who can make up a story like that. She is telling the God’s honest truth. Her testimony isn’t all you have in this case. Her testimony is the truth, but it is not the only evidence . . . Ladies and gentlemen, the bottom line is that [the victim] was telling the truth. What will happen, well, [the victim] was telling the truth and this is a search for the truth.

Finding that trial counsel’s failure to object to the State’s improper vouching constituted ineffective assistance of counsel, the post-conviction court ordered a new trial. The court did not, however, address any of appellee’s other claims for relief. We granted the State’s timely filed application for leave to appeal.

Maryland Rule 4-407(a) provides:

(a) Statement. The judge shall prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based, the federal and state rights involved, the court’s ruling with respect to each ground, and the reasons for the action taken thereon. If dictated into the record, the statement shall be promptly transcribed.

The Court of Appeals has held “[a]s a matter of law” that a post-conviction court is “required to rule globally and concurrently on each allegation raised” in a post-conviction petition. *State v. Borchardt*, 396 Md. 586, 636 (2007). We commend to trial judges our decision in *Pfoff v. State*, 85 Md. App. 296 (1991), where former Chief Judge Wilner of this Court carefully articulated the proper analysis to be used in deciding post-conviction cases. In the instant case, the post-conviction court violated the second step of the three-step process enumerated in *Pfoff* – “to make clear both the court’s ruling on each complaint and the reasons used to support that result.” *Id.* at 304.

We decline to decide whether the post-conviction court erred in granting a new trial on the ground that appellee’s trial counsel provided ineffective assistance in failing to object to the prosecutor’s alleged “vouching” for a witness.² We note that appellee made several other arguments below concerning trial counsel’s alleged deficient performance in failing to object to prosecutorial comments during closing argument. We further note that appellee also asserted that the “cumulative effect” of trial counsel’s errors rendered counsel’s assistance ineffective. These claims are interrelated and should not be decided piecemeal. If we were to decide the sole issue presented on appeal – whether trial counsel was ineffective in failing to object to the prosecutor’s “vouching” for a witness – we would be frustrating the purpose of Rule 4-407 “to provide a comprehensive state-court review of a defendant’s claims and to eliminate delay and multiple postconviction hearings and federal hearings.” *Borchardt*, 396 Md. at 636-637. We therefore remand with instructions to the post-conviction court to “prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based” as well as “the court’s ruling with respect to each ground.”³ *See* Maryland Rule 4-407(a).

² We express no opinion on the correctness of the post-conviction court’s determination of this issue.

³ On remand, the post-conviction court must rule on all allegations that the court failed to address, i.e., allegations of error contained in paragraphs 2) through 8) as identified in the court’s “Statement of Reasons and Order of Court” dated March 15, 2016.

THE “STATEMENT OF REASONS AND ORDER OF COURT” AND “COURT ORDER GRANTING POST CONVICTION RELIEF,” BOTH DATED MARCH 16, 2016, ARE VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION AND RULE 4-407(a). COSTS TO ABIDE THE RESULT.