Circuit Court for Prince George's County
Case No.: CT87-1876A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 920

September Term, 2021

JAMES ANTHONY JACKSON

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 20, 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 1988, a jury in the Circuit Court for Prince George's County convicted James Anthony Jackson, appellant, of two counts of first-degree felony murder, attempted robbery with a dangerous or deadly weapon, and three counts of use of a handgun in the commission of a crime of violence. The court sentenced him to two consecutively run life sentences, plus additional time. Upon direct appeal, this Court affirmed the judgments. *Jackson v. State*, No. 500, September Term, 1989 (Md. App. November 17, 1989).

In 2020, appellant, representing himself, filed a petition for writ of actual innocence and several amendments thereto (collectively the "actual innocence petition"). The circuit court denied the petition, without a hearing. Appellant appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Trial

The following facts are taken from this Court's decision on direct appeal.

> On October 3, 1987, Thelma Mullis, William Richards, and William Foster drove to the 25 Hour store in Landover for the purpose of purchasing narcotics. At that location, they were met by two men who agreed to sell them drugs. These men directed them to the area where the purchase would take place. The men climbed into the back of Richards' pickup truck and proceeded to direct the others first to a 7-Eleven store and then to an area near the Stratford Woods/Sussex Street Station apartments, where the truck was approached by several other men who demanded money. Richards and Mullis were shot fatally; Foster was able to run for help.
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> At trial, Foster identified Marcel Blake as one of the two men who road in the pickup truck. He was also able to identify Lamont Jackson as the man who grabbed his throat, demanded money from Richards; and, when Richards refused, shot him.[1]

[1] Lamont Jackson was tried separately and convicted prior to appellant.

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Blake testified that on the night of October 3, 1987, he, appellant, Lamont Jackson (sometimes known as "Monte"), Alliston Hodges ("Barnyard"), and Kenny Jackson ("Kenny") were together in the parking lot of the 25 Hour store when they discussed that they were "going to rob the next whities that pulled up." He further stated that he approached Richards' pickup truck to discuss the drug deal and he and Barnyard got into the back of the truck and directed the driver first to the 7-Eleven store and then to the apartment complex in accordance with Monte's plan. Blake testified that, once the pickup reached the complex, appellant, Kenny, and Barnyard were standing on the driver's side of the vehicle when shots were fired.

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John Stevenson, a 17-year old who knew appellant from living in the same neighborhood, testified that appellant sent him a letter while he (Stevenson) was in jail. In this letter, which was admitted into evidence, appellant referred to the event and said:

> "John: Yo check this out my negar you remember that night when we were on the strip and we seen the police go to the back of Stratford Woods then we went back there to see what happened then we walked back on the strip then Trina and that other girl walked with us to Barnyard house. I need you to testify that, Me and you left Barnyard house around 6:00 and went to the strip we did not leave until we seen the police cars go to the back of Stratford Woods we were talking to some girls on the strip. Then we seen the police cars so we walk to the back to see what happen[e]d."

(Emphasis added.)[2] The letter asked Stevenson to "[w]rite me back to let me know if you gone do it[.] [J]ust say 'You Safe Brown Eye' then I'll know what's up …." Appellant concluded this letter, "Yo John write back as quick as possible so I can tell my lawyer. Just say 'You Safe Brown Eye.'"

[2] Stevenson testified that he was at the hospital when the attempted robbery and murder took place, and the State submitted into evidence business records from Prince George's General Hospital indicating that Stevenson was admitted into the hospital on October 3, 1987 at 5:46pm and was discharged at 8:00pm. Evidence at trial established that the attempted robbery and murder took place about 8:00pm.

> Stevenson also testified that appellant later spoke with him in jail and asked him to tell appellant's lawyer that he (Stevenson) was with appellant when the shooting occurred. Next, Stevenson testified that appellant gave him a "piece of paper" which appellant wanted him to study for purposes of testifying on appellant's behalf. [Footnote: The "piece of paper" and the letter sent to Stevenson were determined to bear appellant's fingerprints.] Stevenson further testified that he asked appellant "what's going on" and appellant told him the following:
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> > "[Appellant] told me that him, Monte, Barnyard, Marcel and Kenny was up in, up by the 25 Hour Store and they said some white people came to buy a bottle of water and they was going to plan on robbing the people, so he said Barnyard and Marcel got on the back of the truck and they drove down to Barnyard's house and him and Monte went the other way and they was going to rob the people around the back and the people tried to pull off and then that's when he told me, he said me and Monte shot the blood clogs."
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> Finally, Blake testified that he also had received a letter from appellant in connection with these charges. This letter stated in part, "A check this out I[']m saying you know what time it is with this case, right. They trying to say I did the shooting but I wasn't there, you dig . . . ."

Jackson v. State, No. 500, September, Term, 1989, slip op. 1-4.

Victim Richards died "as a result of multiple gunshot wounds," with one bullet entering the right side of his chest and another entering the left side of his chest. A .25 caliber projectile was recovered from his body when the autopsy was performed. Victim Mullis sustained a single gunshot wound to the back of the head and died five days later from her injuries. The bullet removed from Ms. Mullis was a .32 caliber. A copper jacketed projectile, .32 caliber, was recovered from the "foam of the truck seat" and a .32 shell casing was recovered from the floor of the victims' vehicle.

The State prosecuted appellant on the theory that he was "part of an attempted armed robbery," which resulted in the deaths of Mr. Richards and Ms. Mullis and, therefore, regardless of whether appellant had fired any shots, he was guilty of their murders under the felony murder doctrine. Based on our review of the trial transcripts, it does not appear that the murder weapons were recovered—or at least not entered into evidence.

As noted, the jury found appellant guilty of attempted robbery with a dangerous weapon, two counts of first-degree felony murder, and three counts of use of a handgun in the commission of a crime of violence.

Appellant's Petition for Writ of Actual Innocence

Appellant based his actual innocence petition on the following "newly discovered evidence," which we quote:

> 1. Ballistic evidence that proves that the .38 caliber handgun found in petitioner's Apartment by Police was not involve in the shooting deaths of either victim. This evidence was discovered by petitioner in March 1989 during Sentencing Hearing.
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> 2. Search and Seizure evidence containing the .38 caliber handgun found in Petitioner's Apartment by Police during execution of a search warrant and arrest warrant for petitioner co-defendant Alliston Hodges. This evidence was discovered in 1990 when petitioner purchased a copy of his Trial records and discovered that this evidence (along with ballistic evidence) was suppressed by the Prosecutor and trial Counsel.
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> 3. Exculpatory testimony of State's Witness Alliston Hodges from the trial of petitioner's co-defendant Lamont Jackson. Mr. Hodges testified that he was beaten and coerced by Police into writing a statement implicating petitioner and Lamont Jackson as the shooters in the homicide case. This evidence was discovered in 1993 during a conversation with co-defendant Lamont Jackson while we were incarcerated at M.C.A.C. (Super Max Prison).

4. Statement of Alliston Hodges to Police Detectives indicating that petitioner possessed a .38 caliber gun and used it in the shooting deaths. This statement was discovered in 2006 when petitioner purchased copies of his Police file from the archives of Forestville Police Department.

5. Statement of William Baker to Police Detectives indicating that arrestee Kenny Jackson owns a .25 caliber gun and always carry it on his person. This statement was discovered in 2006 when petitioner purchased copies of his Police file from the archives of Forestville Police Department.

Appellant did not attach to his petition any documents in support of his "newly discovered evidence." Rather, it appears that he filed a "Motion for Discovery" in which he requested various documents that he claimed would support his allegations.

Circuit Court Ruling

The circuit court, in a 7-page written Opinion and Order of the Court, denied relief. The court concluded that "the items of newly discovered evidence alleged by Petitioner do not fit the legal definition of newly discovered evidence" because, for example, he did not establish that the documents which he claimed supported his allegations could not have been discovered in time to move for a new trial. The court, citing *Smith v. State*, also found that "Petitioner's claims provide no more than a mere bald assertion or speculative claim[,]" which do not entitle him to relief. *Smith v. State*, 233 Md. App. 372, 411 n. 30 (2017) ("Putting forth a 'mere bald assertion of actual innocence or some highly speculative or unsupported claim of actual innocence is not enough to justify the granting of a writ.'" (quoting *Yonga v. State*, 221 Md. App. 45, 57-58, 62 (2015)).

DISCUSSION

Certain convicted persons may file a petition for a writ of actual innocence based on "newly discovered evidence." *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-

332(d)(6). "Actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
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> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
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> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
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> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith, supra* 233 Md. App. at 410. Moreover, "[t]o 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) (footnote omitted); *see also* Rule 4-332(d)(6).

"Evidence" in the context of an actual innocence petition means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record,

so as to be put before the trier of fact at trial." *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence "speaks to" the petitioner's actual innocence "ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner v. State*, 468 Md. 418, 459-60 (2020) (quoting *Smallwood*, 451 Md. at 323).

A court may dismiss a petition for actual innocence without a hearing "if the court concludes that the allegations, if proven, could not entitle a petitioner to relief." *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim. Proc. § 8-301(e)(2). "[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*." *Smallwood*, 451 Md. at 308.

In this appeal, appellant asserts that (1) the court committed a *Brady* violation by failing "to release exculpatory evidence from its Archives and files upon [his] request made by Motion for Discovery"; (2) the court erred by "not applying the principle of Liberal Construction to [his] Petition for Writ of Actual Innocence"; and (3) the court erred by denying his petition without a hearing. The State responds that the circuit court properly denied relief without a hearing, arguing that (1) appellant's "discovery contention is not properly before this court" because the circuit court did not address it and, moreover, there is "no basis for Jackson's requested discovery relief in the writ of actual innocence statute"; (2) appellant "did not plausibly allege that new evidence had been discovered that could not have been discovered through due diligence" in time to move for a new trial; and (3)

the "alleged newly discovered evidence would be immaterial to the merits of Jackson's trial."

We hold that the circuit court did not err in denying appellant's petition for writ of actual innocence because he failed to base his petition on any "newly discovered evidence." First, he failed to attach any documents in support of his claim. Second, even if such documents exist, we fail to discern why they could not have been discovered pre-trial or in time to move for a new trial given that they all relate to statements, testimony, or ballistic evidence made or gathered prior to his trial. But most significantly, none of the alleged newly discovered evidence speaks to appellant's actual innocence. As the State points out, Alliston Hodges—whom appellant claims recanted a statement to the police that appellant and Lamont Jackson were the shooters in this crime—did not testify at appellant's trial and, based on our review of the record, any statement Mr. Hodges may have made to the police was not introduced into evidence at appellant's trial.

Moreover, as noted, the State's theory at trial was not that appellant was in fact one of the shooters in the incident, but rather that he participated in the attempted armed robbery of the victims and, therefore, he was guilty of felony murder when that attempted robbery resulted in the death of two of the three victims. In short, none of the purported documents or the alleged recantation of Mr. Hodges exculpates appellant as a participant in the attempted armed robbery. Accordingly, the circuit court did not err in denying relief and in doing so without holding a hearing because appellant utterly failed to make a threshold showing that he may be innocent.

As for appellant's contention that the court erred in failing to act on his "Motion for Discovery," appellant points to no authority permitting discovery in relation to a petition for writ of actual innocence. (Nor does he explain why he could not obtain the documents pursuant to a Maryland Public Information Act request.) The burden of obtaining any newly discovered evidence clearly rests with the petitioner who is seeking relief.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.