

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 965

September Term, 2024

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NOTHERON NICKNORE CLARKE, *et al.*

v.

STATE OF MARYLAND, *et al.*

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Wells, C.J.,  
Graeff,  
Kehoe, Christopher B.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: December 27, 2024

\*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

In 2008, a jury in the Circuit Court for Somerset County convicted Notheron Nicknore Clarke, appellant, of armed robbery, robbery, first-degree assault, second-degree assault, reckless endangerment, threatening a student at college, and theft under \$500. Relevant to this appeal, appellant was also charged with two counts of carrying a concealed deadly weapon and two counts of carrying a weapon with intent to injure based on his possession of a knife at the time of his arrest. The trial court granted his motion for judgment of acquittal with respect to those charges, however, finding that the State failed to negate the penknife exception set forth in Section 4-101(a)(5)(ii) of the Criminal Law Article.

Appellant was ultimately sentenced to a term of fifteen years' imprisonment. Following his release from custody, appellant filed a petition for writ of error coram nobis on May 31, 2024, alleging that his trial counsel was ineffective in failing to object when the knife recovered from his person, as well as a knife recovered from an alleged accomplice, were admitted into evidence, and then allowed in the jury room, because the dismissal of the weapons charges rendered evidence of the knives irrelevant. The court denied his petition without a hearing. This appeal followed.

On appeal, appellant first contends that his coram nobis petition should have been granted because the “trial court erred in denying [his] motion to sever the charges and in admitting evidence relating to his possession of a weapon at the time of his arrest a day after the incident at issue.” This contention is not preserved, however, as he did not specifically raise it in his coram nobis petition. *See* Maryland Rule 8-131(a). But in any event, the law of the case doctrine precludes relief. “Under the law of the case doctrine,

‘[n]either questions that were decided nor questions that could have been raised and decided on appeal can be relitigated.’” *Holloway v. State*, 232 Md. App. 272, 284 (2017) (emphasis omitted) (quoting *Kline v. Kline*, 93 Md. App. 696, 700 (1992)). Appellant raised this exact claim on direct appeal, asserting that his weapons charges should have been severed from the robbery charges because evidence of the knives that were seized was not relevant to the armed robbery charge. We rejected this claim, holding that the evidence was “mutually admissible” and there was “no error in the trial court’s decision to deny appellant’s motion to sever.” *Clarke v. State*, No. 2413, Sept. Term 2008 (filed Aug. 19, 2011). Because none of the exceptions to the law of the case doctrine apply, further litigation of these issues is therefore precluded.

Appellant next asserts that the court erred in denying his coram nobis petition because his trial counsel was ineffective in “fail[ing] to object to weapons being allowed into Evidence and the jury’s room after [he] was acquitted of [the weapons charges.]” Again, we disagree. On direct appeal, appellant similarly claimed that the trial court had erred in allowing the knives into the jury room because the weapons charges had been dismissed. We initially noted that this issue had not been preserved because appellant’s trial counsel had failed to object. Nevertheless, we further held that even if the issue had been preserved reversal was not required because: (1) the knives were “relevant” and thus properly admitted into evidence, (2) having been properly admitted into evidence they were permitted into the jury room, and (3) any error in admitting them was “harmless beyond a reasonable doubt given the overwhelming evidence of appellant’s guilt[.]”

To be sure, appellant’s claim on direct appeal was one of trial court error rather than ineffective assistance of counsel. But to establish a claim of ineffective of counsel a defendant must show that: (1) defense counsel was “deficient,” meaning that counsel made errors “so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment[,]” and (2) that “the deficient performance prejudiced the defense.” *Shortall v. State*, 237 Md. App. 60, 72 (2018) (cleaned up). Because we previously held that the admission of the knives into evidence, and the jury room, was not error at all, appellant cannot, therefore, establish that his counsel was deficient in not objecting. Moreover, having alternatively held that any error in admitting the knives was harmless beyond a reasonable doubt, appellant also cannot establish prejudice. Consequently, the trial court did not err in rejecting appellant’s claim of ineffective assistance of counsel and in denying his petition for writ of error coram nobis.

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