Circuit Court for Washington County
Case No. 21-K-04-033475

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1328

September Term, 2022

RASHEEN GORDON

v.

STATE OF MARYLAND

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Rasheen Gordon, appellant, appeals from the denial, by the Circuit Court for Washington County, of a "Petition for Cor[a]m Nobis Relief." For the reasons that follow, we shall affirm the judgment of the circuit court.

> On the morning of August 21, 2003, two men robbed employees of Sellmore Industries, a commercial roofing and siding supply store located in Hagerstown, Maryland. At that time, two employees, Brian Snyder and Matthew Smith, were sitting at desks behind the counter near the front of the store when they saw two men enter the store.
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> One of the men wore a ski mask, and the other man, later identified as [Mr. Gordon], wore a black ski hat and an American flag bandanna that covered the lower portion of his face. The man in the ski mask demanded money. The other man pulled a gun from his waistband, and, standing six to eight feet from Snyder, pointed the gun at Snyder. Snyder handed the man with the ski mask some money from several drawers, while the armed robber alternately held the gun on Snyder and Smith.

Gordon v. State, No. 1937, September Term, 2004 (filed May 12, 2006), slip op. at 1-2.

A Sellmore employee named Anthony Williams later admitted to police "that he was involved in the robbery," and on "the night before the robbery," he had discussed it with three men: Eugene Lattisaw, Mr. Gordon, whom Mr. Williams knew as "Rah," and a third man. *Id.* at 3. Police then interviewed Mr. Lattisaw, who admitted that he drove Mr. Gordon and a man known as "H" to Sellmore, saw them "run out of the store" as one of them "was carrying a gun," and "drove them a distance away." *Id.* Mr. Snyder subsequently "chose [Mr. Gordon's] picture from a police photographic array as a picture of the armed robber." *Id.* at 4. Mr. Smith "was also shown a police photographic array and 'immediately' identified [Mr. Gordon's] picture . . . as a picture of the armed robber." *Id.* When Mr. Gordon was arrested, he initially "denied knowing" Mr. Lattisaw, but when "confronted . . . with . . . telephone records showing that he had called [Mr.] Lattisaw five

times before the robbery, [Mr. Gordon] admitted that he knew [Mr.] Lattisaw." *Id.* "When [a] detective informed [Mr. Gordon] that [Mr.] Snyder had identified him as the armed robber, [Mr. Gordon] responded by putting his hand over his face and saying, 'If that guy's covered up, how can they identify anybody?'" *Id.* at 5. At trial, Mr. Williams "testified for the State." *Id.* Also, Mr. Snyder and Mr. Smith "identified [Mr. Gordon] in court as the armed robber." *Id.* at 6.

Following trial, Mr. Gordon was convicted of armed robbery and related offenses. *Id.* at 1. "The court sentenced him to a total of fifteen years' incarceration, the first ten years to be served without the possibility of parole." *Id.*

On December 26, 2007, Mr. Gordon filed a petition for post-conviction relief. On March 21, 2011, the court granted the petition on the ground that defense counsel had provided ineffective assistance in "failing to object to [an] erroneously given jury instruction," and awarded Mr. Gordon a new trial. On June 13, 2011, Mr. Gordon pleaded guilty to armed robbery. The court sentenced Mr. Gordon to a term of fifteen years' imprisonment, suspended all but time served, and ordered a term of two years' unsupervised probation.

On September 23, 2021, Mr. Gordon filed the petition for coram nobis relief, in which he stated, in pertinent part:

> The case for which [Mr. Gordon] was convicted in this [c]ourt was investigated by Detective Shawn Schultz of the Hagerstown Police Department. Detective Schultz was a necessary witness for the State and his credibility was important to the State's case. [Mr. Gordon] avers that at the time that he entered the plea of guilty in this case, he was unaware that Detective Schultz was under investigation by the Hagerstown Police Department Professional Standards Division for conduct unbecoming an

> officer. [Mr. Gordon] avers that Detective Schultz was placed on administrative leave during the Internal Affairs investigation and was subsequently dismissed from the Hagerstown Police Department. [Mr. Gordon] avers that his Counsel knew of the allegations against and the investigation of Detective Schultz, but never advised [Mr. Gordon] of the allegations or how they might be used in his defense.

Mr. Gordon contended that defense counsel "misled him to enter the plea by non-disclosure of information that could have been directly supportive of his defense," and hence, he "did not tender a guilty plea[] that was knowing, voluntary, and intelligent." (Emphasis omitted.) Mr. Gordon further contended that "[s]ince his conviction, [he] has suffered significant collateral consequences," specifically "that he was subjected to a mandatory term of confinement in a Federal Institution."

Following a hearing, the court denied the petition, stating in pertinent part:

> When [Mr. Gordon] agreed to accept the State's plea agreement, he did so with the understanding that he was waiving his right to confront the State or any witnesses for the State on any issue. [Mr. Gordon] agreed to forego his right to undermine the State's case and the chance of acquittal in exchange for the surety offered by a bound plea agreement. There has been no evidence offered by [Mr. Gordon] which would indicate that [he] failed to understand this fact. Nor has there been any evidence offered that indicates that [Mr. Gordon's] response was forced or coerced. [Mr. Gordon] explicitly stated that he waived his right to challenge any insufficiencies in the State's case. It is ultimately irrelevant that [Mr. Gordon] has come to regret that decision in light of its collateral consequences.
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> . . . . While [Mr. Gordon] claims that he "relied upon his attorney to provide him with all the information that he needed" to make his guilty plea, there are no facts before this [c]ourt that indicate to a reasonable certainty that [Mr. Gordon] would have gone to trial if he had access to this information. The binding plea agreement offered to [Mr. Gordon] allowed for his immediate release. Therefore, it appears to this [c]ourt that [Mr. Gordon] accepted the plea agreement because he was not willing to try his case before [a] jury. Given the weight of potential evidence against [Mr. Gordon], and considering the favorable terms of the binding plea agreement offered by the State, this [c]ourt cannot conclude that had [Mr. Gordon] been

> informed of some of the defects in the State's case[,] there is a reasonable certainty that he would have proceeded to trial.

Mr. Gordon now contends that had defense counsel informed him, at the plea hearing, of the "pertinent information" regarding Detective Schultz, Mr. Gordon "would have [been] persuaded . . . to either go to trial or request to have his case dismissed," and hence, the court erred in denying the petition. We disagree for three reasons. First, Mr. Gordon attached to his brief an excerpt from the transcript of the plea hearing, in which the prosecutor conceded that "[o]ne of the primary reasons for [the] disposition . . . is the departure from the Hagerstown Police Department of [Detective] Schultz," that the detective "left under a disciplinary cloud," that the disclosure of the detective's "personnel records . . . would be an issue that would be of some controversy," that the State "wish[ed] to avoid that and avoid calling [the detective] to the stand," and that the State had advised defense counsel that the controversy "existed" and was "part of the basis for the plea agreement." Mr. Gordon does not cite any evidence contrary to the prosecutor's statements, and does not allege that he thereafter asked to withdraw his plea. Second, Mr. Gordon does not cite any evidence contrary to the court's conclusions that he "explicitly stated that he waived his right to challenge any insufficiencies in the State's case" and that the "plea agreement offered to" him was "binding" and "allowed for his immediate release." Finally, the evidence presented by the State at trial outside of any testimony that Detective Schultz could have presented was considerable, if not overwhelming. In light of the strength of this evidence and the terms of the plea agreement, we conclude that the court did not err in concluding that there was no "reasonable certainty" that Mr. Gordon,

upon learning "of some of the defects in the State's case[,] would have proceeded to trial."

Hence, the court did not err in denying the petition.

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