Circuit Court for Prince George's County
Case No.: CT950759X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1862

September Term, 2023

BRYANT TERRANCE COOPER

v.

STATE OF MARYLAND

Berger,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2024

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

In 1995, Bryant Cooper pleaded guilty to first-degree burglary in the Circuit Court for Prince George's County and was sentenced to five years' imprisonment, all suspended in favor of five years supervised probation. In 1998, the court revoked his probation after finding that he had violated conditions of probation and ordered him to serve his previously suspended time.[1] In 2023, Cooper, representing himself, filed his second petition for a writ of error coram nobis—the first filed in 2021 was denied—which the court denied. Cooper appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

In his petition for writ of error coram nobis, Cooper asserted that his 1995 guilty plea to first-degree burglary was not knowingly and voluntarily entered for various reasons, including: the court failed to review the rights he was waiving by pleading guilty, the maximum sentence he was facing, and the elements of first-degree burglary; the court and defense counsel "failed to explain the risk and benefits of a plea offer" and failed to "explore plea possibilities and rush[ed] into plea without investigation"; and counsel failed to "investigate [his] competency before plea" or request the court to order a medical evaluation.[2] He asserted that he "did not understand" any of his rights, trial counsel was ineffective, and the factual basis was insufficient to support the plea. He also maintained

[1] In March of 1998, Cooper entered an *Alford* plea to child abuse and was sentenced to five years, all suspended, and placed on a five-year term of supervised probation in case no. CT962407X. He was later found to have violated terms of that probation and in December of 1998 his probation was terminated. In 2023, the self-represented Cooper filed a petition for a writ of error coram nobis seeking to overturn the 1998 conviction. The circuit court denied his request, a decision affirmed by this Court. *Cooper v. State*, No. 1492, September Term 2023 (Md. App. May 9, 2024).

[2] The record before us reflects that the court had ordered a psychological evaluation of Cooper to aid in sentencing.

that defense counsel filed a belated application for leave to appeal, which was subsequently dismissed as untimely.[3] He asserted that his 1995 conviction was used to enhance a federal sentence he is currently serving. Finally, he claimed that "due to the transcript retention schedule," he is unable to produce the transcript from the 1995 plea hearing.

As noted, the circuit court denied relief. Among other things, the court found that Cooper had "not justified why he took no action on his alleged appeal for over 20 years[,]" and concluded that he "failed to meet his burden of proof[.]"

STANDARD OF REVIEW

"Because of the extraordinary nature of a coram nobis remedy, we review a court's decision to grant or deny such a petition for abuse of discretion." *Byrd v. State*, 471 Md. 359, 370 (2020) (quotation marks and citations omitted). "In determining abuse of discretion, however, an appellate court should not disturb the *coram nobis* court's factual findings unless they are clearly erroneous, while legal determinations shall be reviewed *de novo*." *Id*. (quotation marks and citation omitted).

DISCUSSION

"Coram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists." *State v. Smith*, 443 Md. 572, 623 (2015). Relief is "justified 'only under circumstances *compelling such action to achieve justice*.'" *State v. Rich*, 454 Md. 448, 461

[3] The record before us indicates that Cooper, *pro se*, filed a belated application for leave to appeal from his revocation of probation. There is no indication that counsel had filed a belated application for leave to appeal from his guilty plea or that he had requested counsel to file one.

(2017) (quoting *Smith*, 443 Md. at 597) (further quotation omitted). To be eligible for the writ, a petitioner must meet certain requirements, including that the petitioner is "'suffering or facing significant collateral consequences'" because of a conviction which can be "'legitimately'" challenged "'on constitutional or fundamental grounds.'" *Smith*, 443 Md. at 623-24 (quoting *Skok v. State*, 361 Md. 52, 78-79 (2000)). In *Jones v. State*, 445 Md. 324, 338 (2015), the Maryland Supreme Court reiterated that a coram nobis petitioner "is entitled to relief . . . if and only if" the petitioner challenges a conviction based on constitutional, jurisdictional, or fundamental grounds; the petitioner rebuts the presumption of regularity that attaches to criminal cases; the petitioner is facing a significant collateral consequence as a result of the challenged conviction; the alleged issue has not been waived or finally litigated; *and* another statutory or common law remedy is not available. In other words, a petitioner must satisfy all five criteria. Even if the criteria is met, however, the United States Supreme Court has stated that "judgment finality is not to be lightly cast aside; and courts must be cautious so that the extraordinary remedy of *coram nobis* issues only in extreme cases[,]" *United States v. Denedo*, 556 U.S. 904, 916 (2009), a proposition recognized by this Court in *Vaughn v. State*, 232 Md. App. 421, 429 (2017) and *Coleman v. State*, 219 Md. App. 339, 353-34 (2014).

In this appeal, Cooper reiterates the claims he made in the circuit court and insists that he "meets the requirements" for coram nobis relief. And, as he did below, he asserts that he is unable to provide the transcript from the 1995 plea hearing because of the "transcript retention schedule."

The State asserts that we should decline to review the decision because this was Cooper's second petition for writ of error coram nobis and, therefore, it was barred by res judicata. The State also maintains that the circuit court's decision denying relief is correct because Cooper cannot rebut the presumption of regularity that attached to his 1995 guilty plea.

We need not address the res judicata contention because we agree with the State that Cooper did not rebut the presumption of regularity that attached to his 1995 guilty plea proceeding and cannot do so without the transcript from that hearing. The record before us reflects that Cooper sent a letter to the circuit court in May 1999 regarding this and other cases and noting that he wished to file, among other things, "a coram nobis petition" and asking how to obtain transcripts. A court employee promptly responded with the address of the Court Reporter's Office (and also with the address of the Office of the Public Defender). Consequently, Cooper's inability to obtain the transcript from his 1995 plea hearing has less to do with the court's "transcript retention schedule" and more with his failure to obtain the necessary proof to corroborate the bald allegations he made in his coram nobis petition twenty-eight years after he entered the guilty plea. We are not persuaded that the court erred or abused its discretion in denying relief.

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