

Circuit Court for Charles County
Case No.: C-08-CR-20-000417

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2315

September Term, 2023

MARC CHRISTOPHER BROWN, JR.

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.

After the Circuit Court for Charles County dismissed his petition for writ of actual innocence, Marc Christopher Brown, Jr., appellant, noted this appeal. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Pursuant to an indictment filed on August 14, 2020, Brown was charged with nine offenses based on attempted burglaries at Sky Zone (an indoor trampoline park) on September 20, 2019 and Capital Clubhouse (an indoor ice skating rink) on November 24, 2019. Following a trial on August 24-27, 2021, at which Brown represented himself, a jury convicted him of all offenses.¹ The court sentenced Brown to a total term of 25 years' imprisonment. He appealed, but subsequently withdrew the appeal.²

On August 9, 2023, Brown, *pro se*, filed a Petition for Writ of Actual Innocence. As for his claim of “newly discovered evidence,” he asserted the following:

[E]vidence was planted on Defendant during December 12, 2019 arrest by Detectives Smith #555 & Burgess #589. Because the testimony of Smith #555 cannot be sustained due to corruption, her testimony is needed to establish the chain of custody for the DNA and the bookbag used in the present case. The DNA and the bookbag cannot be used in the present case,

¹ The record reflects that, following a hearing on March 31, 2021, Brown discharged the assistant public defenders representing him. The court had found that there was no meritorious reason for the discharge, but it granted his request and permitted Brown to proceed *pro se*. Counsel did represent Brown at sentencing, and also on appeal until Brown discharged his appellate counsel prior to briefing.

² Brown was also charged in another case (C-08-CR-20-000020) with offenses, occurring on dates distinct from this case, related to a home invasion, kidnapping, robbery, and motor vehicle theft. Brown also represented himself at trial in the -020 case and was convicted of all counts. The jury trial in case -020 was held in June 2021. The court sentenced Brown on September 29, 2021 to a total term of 75 years' imprisonment, to run concurrent with the sentences in this case. On appeal, this Court affirmed the convictions. *Brown v. State*, No. 1384, September Term 2021 (Md. App. June 7, 2023).

and based on the testimony of the prosecuting attorney the only reason charges were ever filed was due to the positive DNA results, it would be vindictive, and thus malicious, to allow the present case to restart or to continue to take effect in violation of U.S. Constitution 14th Amendment – Section 2003 (malicious prosecution). The evidence in case # C-08-CR-20-000020 can also be properly admitted in the present case since defendants are same person. Because Petitioner could not prove corruption in time to move for a new trial under MD Rule 4-331, and MD Rule 4-331(c) is less applicable due to the fact that Petitioner is actually innocent of all charges, Criminal Procedure § 8-301 is better suited. As well, Petitioner has always claimed innocence, even using corruption and tampered evidence as his trial defense.

Brown did not explain the bases for his assertion that the detectives planted evidence on him or tampered with the evidence. The circuit court dismissed the petition after concluding that Brown “failed to allege in his petition any newly discovered evidence.”

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:
 - (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]

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

(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 v. State*, 233 Md. App. 372, 410 (2017). 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* Md. 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.

We find no error in the circuit court’s dismissal of Brown’s petition without a hearing. Brown’s petition did not point to any evidence to support his bald allegation that the detectives planted evidence on him. Moreover, by his own admission in the petition, he had made the same or similar arguments in his trial in case -020 tried in June 2021, shortly prior to his August 2021 trial in this case. He also asserted in his petition that he “has always claimed innocence, even using corruption and tampered evidence as his trial defense.” Thus, we agree with the circuit court that Brown had failed to allege any “newly discovered evidence” to support his claim of actual innocence.

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