Circuit Court for Baltimore City
Case No.: 211182001

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2883

September Term, 2018

SHAWN JACKSON

v.

STATE OF MARYLAND

Berger,
Zic,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 1, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On August 2, 2011, Shawn Jackson, appellant, pleaded guilty in the Circuit Court for Baltimore City to conspiracy to distribute heroin and was sentenced to three years' imprisonment with all but time-served suspended in favor of three years' probation. He did not thereafter seek leave from this Court to appeal from his guilty plea.

Several years later, on March 7, 2018, he filed a petition for a writ of error coram nobis attacking his 2011 guilty plea on various grounds. On June 8, 2018, the court denied that petition in all respects without holding a hearing on it. Appellant noted an appeal from that denial and presents us with the following question which we have re-phrased and condensed for clarity:[1] Did the trial court impermissibly interject itself into the guilty plea negotiations?

Discerning no reversible error or abuse of discretion, we shall affirm the judgment of the circuit court denying appellant's coram nobis petition.

BACKGROUND

Coram Nobis Generally

"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).

[1] Appellant worded his questions as follows:

I. Did the trial court err in denying Appellant's petition for writ of error coram nobis?

II. Was Appellant denied his right to due process and the effective assistance of counsel when the trial court impermissibly interjected itself into plea negotiations?

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 allegations raised have not been waived or finally litigated; and another statutory or common law remedy is not available. *Jones v. State*, 445 Md. 324, 338 (2015). A petitioner must satisfy all five of those criteria. *Id.*

Even if the foregoing prerequisites are met, however, relief is only required to be granted under circumstances compelling such action to achieve justice. *Vaughn v. State*, 232 Md. App. 421, 429 (2017).

Appellant's Guilty Plea

On May 19, 2011, police conducting covert surveillance of appellant and his confederate, Paul Nixon, suspected the pair of selling drugs. The pair was charged with various offenses and were scheduled to be tried together. On the morning of trial, Nixon pleaded not guilty, and, as indicated earlier, appellant pleaded guilty. The terms of appellant's guilty plea agreement were explained on the record as follows:

THE COURT:	[I]t's my understanding, as to [appellant], that he'll be entering a plea of guilty [to] conspiracy to distribute heroin, Count 4.
[DEFENSE COUNSEL]:	Yes, Your Honor.
THE COURT:	In exchange for that plea, he'll receive a three[-]year sentence. The [c]ourt will suspend all but time served, and three years supervised probation. That is the [c]ourt's offer. Is that how the State's willing to proceed, [prosecutor]?

[THE STATE]:	Yes, Your Honor. The State is willing [to] proceed, and the State will join in the [c]ourt's offer since the other part of – the State will then also place on the STET docket Case 111095040. I gave the information to Madam Clerk.
THE COURT:	And otherwise, [defense counsel], that's how –
[DEFENSE COUNSEL]:	Yes, sir.
THE COURT:	– Mr. Jackson wishes to proceed; is that correct?
[DEFENSE COUNSEL]:	Yes, sir.

Later, during the guilty plea proceeding, after the court had accepted appellant's guilty plea and was about to proceed to sentencing, the court asked the parties whether they would "submit as to the negotiated disposition" and both parties responded affirmatively. Appellant then declined to make any statements in allocution. The court then imposed the sentence contemplated by the guilty plea agreement.

Appellant's Petition for a Writ of Error Coram Nobis

Several years later, appellant, acting *pro se*, filed a petition for a writ of error coram nobis in the circuit court in which he argued, *inter alia*, that "the court impermissibly interjected itself into the plea[-]bargaining process as an active negotiator, infringing upon the function reserved to counsel in the adversary process." In that petition, appellant emphasized that, when the trial court and the State discussed the terms of the guilty plea agreement, they both referred to it as "the [c]ourt's offer." In support of his argument, appellant broadly relied on *Barnes v. State*, 70 Md. App. 694, 707 (1987) and *Sharp v. State*, 446 Md. 669, 701 (2016) for the proposition that "by making a plea offer and

encouraging the defendant to accept it, the trial court 'improperly' interjected itself into the plea[-]bargaining process 'as an active negotiator.'"[2]

In his petition, appellant alleged that he was facing significant collateral consequences from his conviction in this case because, according to him, as a result of it, he faced increased sentencing exposure in a pending federal criminal case against him.

The Denial of Coram Nobis Relief

As noted earlier, without holding a hearing, the circuit court denied appellant's petition by way of a written memorandum opinion and order. After the court explained the holdings of *Barnes* and *Sharp, supra,* it concluded that appellant had failed to prove that "the judge's remarks tended to discourage [appellant] from proceeding to trial or were otherwise coercive" and/or that "the trial court impermissibly involved itself as an active negotiator, thereby making the plea involuntary."

In addition, the court observed that appellant had not established one of the prerequisites for a coram nobis petitioner to be eligible for relief, *i.e.*, that the petitioner suffers from a "significant collateral consequence" arising from his conviction. The court determined that appellant's assertion that he faced an enhanced sentence in federal court as a result of his conviction in this case was a "bald allegation[.]"

[2] In his petition filed in the circuit court, appellant vaguely alludes to an allegation of ineffective assistance of counsel based on trial counsel's alleged error in not objecting or taking any other steps when faced with what appellant deems to be the trial court's impermissible interference in the plea-bargaining process. On appeal, he makes this argument more pellucidly. Nevertheless, because, as will be seen, we have determined that the trial court made no error, we conclude that appellant was not denied his right to effective assistance of counsel in connection with that non-error.

Appellant's Contention on Appeal

On appeal, appellant, again acting *pro se*, asserts that the coram nobis court erred in not granting him his requested relief because, according to him, "[t]hat the [trial] [c]ourt interjected itself into plea negotiations and solicited [a]ppellant to plead guilty could not be clear[er]." He concludes his argument by stating that "[i]n this case, had the [c]ourt not interfered, the State and the defense counsel could have reached a more favorable decision for [a]ppellant. Absent counsel's error, [a]ppellant would not have pleaded guilty."

On appeal, he once again asserts that he is facing significant collateral consequences stemming from his conviction in this case in the form of increased sentencing exposure in a pending federal case.[3]

DISCUSSION

Standard of Review

Given the extraordinary nature of coram nobis relief, we review the circuit court's ultimate decision to deny relief under the abuse of discretion standard, with legal determinations reviewed without deference and factual findings left undisturbed unless clearly erroneous. *State v. Rich*, 454 Md. 448, 470-71 (2017). "There is an abuse of discretion where no reasonable person would take the view adopted by the trial court[.]" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (cleaned up). "To be reversed the decision under consideration has to be well removed from any center mark imagined

[3] Appellant does not mention the circuit court's finding that this assertion amounted to a bald allegation.

by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id*. at 418-19 (cleaned up).

Analysis

A.

At the root of appellant's argument is his contention that the record of the guilty plea proceedings demonstrate that the trial court impermissibly interjected itself into the guilty plea negotiations. He principally relies, without much analysis, on *Barnes*, *supra*, to support his position.

In *Barnes*, Barnes was facing two life sentences plus fifty years. At the outset of the proceedings on the day of Barnes's scheduled trial, Barnes's attorney moved to strike his appearance citing Barnes's dissatisfaction with his representation. 70 Md. App. at 696-97. After the court explained that Barnes's reason for dissatisfaction was meritless, the court began to discuss the state of the guilty plea negotiations. During that discussion, the court recounted that the State had earlier agreed to recommend a fifty-year sentence if Barnes pleaded guilty to second-degree murder and a handgun charge. *Id.* at 697-98. Barnes had apparently earlier rejected that offer. *Id*. at 707. The following then transpired:

> THE COURT: [The State] is recommending 50 years. I told your attorney. I don't know anything about this case. I don't know you from Adam, I really don't. But if you wanted to plead guilty, I was willing, even though the State is screaming and kicking for 50 years, I was willing to go around it today in 15 minutes. I would give you a total of 30 years. That is what I told [defense counsel], and [the State] got angry. She walked out the door. I know you are not a party to anything. Listen to me. You tell me [defense counsel] is incompetent for what he did for you. You are facing two life terms plus 50 years. He got me to offer you not over 30 years and you are telling me that this man is incompetent? Is that what you are telling me? Listen to me because I want an answer right now. I am not fooling around now. I swear to

> God that is true. You can ask anyone down here. I have never presided over a jury trial. I have never had a jury come back not guilty. If this jury comes back guilty, depending on what the pre-sentence report is, I could give you a total of two life sentences plus 50 years. I want you to know that. I am going to give you two minutes to talk to [defense counsel]. If you want him as your lawyer, fine. If you don't want him as your lawyer, I will exclude him and you try the case without your lawyer or you can have him as your lawyer. But in two minutes that 30 year offer I am going to withdraw forever. Do you understand me, yes or no? Do you understand me?
>
> THE DEFENDANT: Yeah, I understand.

Id. at 698.

Thereafter, Barnes entered a guilty plea pursuant to the court's offer and weeks later the court sentenced him in accordance with the agreement. *Id*. at 701. He thereafter took an appeal arguing that the trial judge's impermissible participation in the plea-bargaining process rendered his guilty pleas involuntary. *Id*. at 701. Under the circumstances present in *Barnes*, we agreed that the court exceeded the permissible bounds of judicial participation in the plea-bargaining process because "[r]ather than merely approving or rejecting a plea agreement . . . the judge, in effect, negotiated his own agreement with the defendant by offering him a more favorable sentence than the State had been willing to offer in its plea discussions." *Id*. at 706. We then turned to the question of whether the court's actions rendered Barnes's guilty plea involuntary. *Id*. at 707-08.

In finding that the court's actions had, in fact, rendered Barnes's guilty plea involuntary, we noted that, *inter alia*, "[t]aken as a whole," the court's remarks "tended to discourage the appellant's assertion of his innocence in a jury trial and suggested that if a jury found the appellant guilty, he would receive the maximum sentence." *Id*. at 708. We also noted that "the two-minute time limit imposed upon the appellant added to the coercive

nature of the remarks, even where the appellant had considered a plea bargain prior to that time." *Id*.

In this case, the court began its discussion of the plea agreement by outlining its "understanding" of it, *i.e.*, that appellant would be entering a guilty plea to conspiracy to distribute heroin and would be sentenced to three years' imprisonment with all but time served suspended plus a term of probation. That the court placed on the record its "understanding" of the plea agreement certainly seems to detract from appellant's assertion that the court had impermissibly interjected itself into the plea negotiations. Appellant's argument seems to proceed on the assumption that, no matter what else occurred on the record, when the court (and the State) referred to the guilty plea agreement as the "court's offer" that automatically meant that the court had impermissibly interjected itself into the plea negotiations and that appellant's plea became involuntarily entered as a result. We do not assign such talismanic properties to the court's (and the State's) reference to the "court's offer" as appellant suggests.

In our view, what occurred in appellant's case is a far cry from what occurred in *Barnes*. In *Barnes*, we found that the court pressured Barnes into pleading guilty by saying things such as: "Listen to me because I want an answer right now. I am not fooling around now . . . I have never had a jury come back not guilty . . . I could give you a total of two life sentences plus 50 years . . . I am going to give you two minutes to talk to [defense counsel] . . . But in two minutes that 30 year offer I am going to withdraw forever." *Id*. at 698, 708.

In this case, nothing anyone said on the record during the plea proceeding even comes close to the pressure exerted by the court in *Barnes*. Instead, the court merely recited what it understood to be the terms of the guilty plea agreement. Moreover, it appears that appellant had already communicated his desire to accept the proposed agreement and plead guilty before the proceedings began. As a result, in our view, the record does not support a finding that the court impermissibly interjected itself into the guilty plea negotiations. But even if it did, appellant's guilty plea was not made involuntary as a result.

B.

As noted earlier, before a petitioner may be eligible for coram nobis relief, the petitioner "must be suffering or facing significant collateral consequences from the conviction" from which he seeks relief. *Skok v State*, 361 Md. 52, 79 (2000). Appellant, without citation to any authority or any offer of proof, asserted in his petition for coram nobis relief that he faced significant collateral consequences as a result of his conviction in this case because he "is currently under a federal indictment and, as such, this conviction currently affects his criminal history computation and his sentencing guidelines." He continued:

> The conviction adds several points to [his] criminal history computation as well as making him a career offender due to another past felony conviction. Because of this conviction, [he] will be assigned a criminal history category of VI. But for this conviction, [he] would be assigned a lesser criminal history category. This stark difference between criminal history categories nearly doubles [his] federal sentencing exposure, and thus demonstrates that he faces a substantial disadvantage because of the challenged conviction.

As noted earlier, the post-conviction court did not accept appellant's position and deemed his assertion of suffering from a collateral consequence to be a "bald allegation[.]"

We do not hold that finding to be in error as appellant included no information identifying the crimes he faced in federal court and no information about his criminal history. Given the complexity of the federal sentencing guidelines and appellant's failure to provide any factual support for his assertions, we agree that appellant has not shouldered his burden to prove that he is suffering from significant collateral consequences from his conviction in this case.

Moreover, we agree with the State that, although a sentencing enhancement is within the realm of things that could possibly constitute a significant collateral consequence within the meaning of coram nobis proceedings, because appellant asserts that he has not even been convicted of the federal offense he claims he has been indicted for, he is not yet suffering that consequence and as a result his claim is speculative and therefore should be rejected. *See Gross v. State*, 186 Md. App. 320, 332 (2009) ("In order to be entitled to *coram nobis* relief, the petitioner must prove that he or she is suffering or facing significant collateral consequences from the conviction from which he seeks relief." (cleaned up)); *Graves v. State*, 215 Md. App. 339, 353 (2013) ("The collateral consequences must be actual, not merely theoretical.").

CONCLUSION

We therefore affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.