No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LUIS A. PENA,

Petitioner,

v.

STATE OF MARYLAND,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE

COURT OF APPEALS OF MARYLAND

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME I (A-thru-C)

LUIS A. PENA, #305-673

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Pro Se Petitioner

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LUIS A. PENA	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
v.	*	**Petition Docket No. 141 September Term, 2018**
	*	
STATE OF MARYLAND	*	**(No. 2578, Sept. Term, 2016 Court of Special Appeals)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the supplement filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and the supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge

DATE: July 31, 2018

Appx. 2B

Circuit Court for Baltimore County
Case No. 03-I-01-000468

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2578

September Term, 2016

LUIS PENA

v.

STATE OF MARYLAND

Woodward,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

App. 3B

On September 11, 2001, in the Circuit Court for Baltimore County, appellant Luis Pena pleaded guilty to robbery with a dangerous and deadly weapon and use of a handgun in the commission of a felony and on December 5, 2001, he was sentenced to two concurrent terms of fifteen years' imprisonment. He did not seek leave to appeal. Following a bench trial in an unrelated case, Pena was convicted of attempted murder, use of a handgun in the commission of a crime of violence, and a host of other crimes. On January 31, 2002, he was sentenced to twenty-five years' imprisonment for attempted murder and to a concurrent term of fifteen years (the first five years without the possibility of parole) for the handgun offense, with those sentences to run consecutive to any outstanding sentence.[1]

In 2016, Pena filed a petition for writ of error *coram nobis* in which he challenged the validity of his 2001 guilty pleas on the grounds that the nature and elements of the offenses were not explained to him on the record of the plea proceeding. He also claimed that the 2001 convictions were used during the sentencing proceeding in the 2002 case "to procure a consecutive sentence," which he asserted "constitutes serious collateral consequences."

[1] In the 2002 case (Circuit Court for Baltimore County Case No. 01-CR-0470), additional sentences were also imposed, but like the handgun sentence they were ordered to run concurrent with the sentence for attempted murder. Thus, the total sentence imposed in Case No. 01-CR-0470 was twenty-five years, the first five years without the possibility of parole, to run consecutive to any outstanding sentence. The sentences imposed in the 2001 guilty plea case (Circuit Court for Baltimore County Case No. 03-K-01-0468) obviously were outstanding when Pena was sentenced in the attempted murder case.

App'x. 4B

Following a hearing, the *coram nobis* court acknowledged that the elements of the armed robbery and handgun offenses were not explicitly reviewed with Pena on the record of the 2001 plea hearing, but the court was not persuaded that Pena was, in fact, unaware of the nature of those crimes when he pleaded guilty.[2] The *coram nobis* court did not find credible Pena's allegations that he did not, in fact, know the nature of robbery with a dangerous and deadly weapon and use of a handgun in the commission of a felony when he pleaded guilty to those charges. The court noted that Pena was represented by an experienced criminal defense attorney and was confident that there was "no way that [defense counsel] did not discuss with [Pena] the nature and elements" of the charges. The court also pointed to the Initial Appearance Report certifying that, upon Pena's initial appearance in court, the presiding judge "advised defendant of the nature of the charges and allowable mandatory penalties." In short, the court concluded that Pena had failed to establish that his plea was not entered knowingly, that is, with an understanding of the offenses. The court also concluded that Pena was ineligible for *coram nobis* relief because he failed to establish that he was facing any significant collateral consequence as a result of the 2001 convictions. Pena appeals. For the reasons to be discussed, we affirm.

[2] Pena, a self-represented litigant, was advised by the *coram nobis* court that he could testify, under oath, and call witnesses to testify in support of his position. Pena chose not to testify and did not call any witnesses. His only evidence in support of his allegation that his guilty pleas were not entered knowingly was the transcript from the plea hearing, which reflects that he was not specifically advised, on the record of the hearing, of the elements of the offenses to which he was pleading guilty.

App. 5-B

DISCUSSION

"A writ of error *coram nobis* 'is an extraordinary remedy' justified 'only under circumstances *compelling such action to achieve justice.*'" *Rich v. State*, 454 Md. 448, 461 (2017) (quoting *State v. Smith*, 443 Md. 572, 597 (2015)) (further quotation omitted). The writ is available to "a convicted person who is not incarcerated and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction[.]" *Skok v. State*, 361 Md. 52, 78 (2000).[3] "[T]he grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character." *Id.* "[A] presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner." *Id.*

We "review the *coram nobis* court's decision to grant or deny the petition for abuse of discretion." *Rich*, 454 Md. at 471. We will not "disturb the *coram nobis* court's factual findings unless they are clearly erroneous," but "legal determinations shall be reviewed *de novo*." *Id.*

When a *coram nobis* petitioner is claiming that he did not understand the offenses to which he had pleaded guilty when he entered the plea, "the only issue is whether the defendant understood the nature of the charges – **regardless** of whether the trial court could determine as much." *State v. Smith*, 443 Md. 572, 653 (2015) (emphasis in the original). "In other words, a defendant can successfully challenge a guilty plea on direct appeal by showing that the trial court did not follow the procedural requirements of Maryland Rule

[3] When Pena filed his petition for writ of error *coram nobis*, he had completed his sentences in the 2001 case, but was still serving time for the 2002 convictions.

Appx 6-B

4-242(c)," but "when challenging a guilty plea in a petition for writ of error *coram nobis*, the defendant is only entitled to relief if he or she can establish that, at the time of the plea, he or she was not, *in fact*, 'pleading voluntarily, with understanding of the nature of the charge[.]'" *Rich, supra,* 454 Md. at 463.

Pena maintains that his plea was not entered knowingly because the elements of robbery with a dangerous and deadly weapon and use of a handgun in the commission of a felony were not explained to him on the record of the plea proceeding. The fact that the elements of the crimes were not explicitly iterated on the record, however, does not establish that Pena, in fact, did not understand the nature of the offenses. Years after he pleaded guilty, Pena *alleged* that he had not known the nature of the offenses when he entered the pleas, but notably he chose not to support that allegation with testimony, under oath, at the *coram nobis* hearing. The *coram nobis* court discounted his allegations that he had been unaware of the nature of the charges when he entered his guilty pleas, noting (1) that he was represented by a seasoned defense attorney who certainly would have discussed with him the nature and elements of the offenses, and (2) that the Initial Appearance Report demonstrated that he was properly advised of the nature of the charges pending against him when he first appeared in court.[4] In short, the *coram nobis* court concluded that Pena failed

[4] The *coram nobis* court's consideration of factors outside the four-corners of the plea hearing transcript was not improper. As the Court of Appeals has made clear, when challenging the validity of a guilty plea in a petition for writ of *coram nobis*, the court is not limited to the record of the plea hearing, and it may "consider additional evidence[.]" *State v. Rich*, 454 Md. 448, 464 (2017).

to meet his burden that he, in fact, had entered his guilty pleas without an understanding of the nature of the charges. We find no error in that conclusion.

Moreover, we agree with the *coram nobis* court that Pena failed to establish that he was suffering a significant collateral consequence as a result of the 2001 guilty pleas. At the *coram nobis* hearing, Pena maintained that his sentence in the 2002 case was "enhanced" because it was ordered to run "consecutive," which made "the first 15 years with parole automatically turned into non-parolable." In other words, his position is that the ordering of the sentence in the 2002 case to run consecutive to the sentence in the 2001 guilty plea case "had the effect of transforming that initial parolable 15 year term after service of five years imposed under indictment No. 03-K-01-0468 [the guilty plea case] into a nonparolable fifteen (15) year term." The *coram nobis* court found no merit to that contention, and neither do we.

Pena further maintains that the 2001 guilty pleas increased the sentencing guidelines in the 2002 case. In rejecting this contention, the *coram nobis* court noted that for the attempted murder conviction in the 2002 case, the sentencing guidelines were twenty-five years to life, even without the 2001 convictions taken into consideration. The *coram nobis* court further noted that the sentencing transcript from the 2002 case reflected that the sentencing judge was "very close" to imposing a life sentence but, because of Pena's age, instead imposed a twenty-five year term of incarceration – the lowest end of the guidelines. In short, there is no evidence in the record that the sentences in the 2002 case were enhanced because of the 2001 guilty pleas.

Pena also attempts to establish a significant collateral consequence by asserting that the 2001 convictions were considered by the 2002 sentencing court when it ordered the sentence in that case to run consecutive to any outstanding sentence. The *coram nobis* court found that the 2002 case "was a completely different and unrelated crime" and that running the 2002 sentence consecutive to "any outstanding sentence" was a natural consequence, not a "significant collateral consequence" as that term is understood in the *coram nobis* context. We agree.

Based on the foregoing, we hold that the *coram nobis* court did not abuse its discretion in denying Pena's petition for relief.

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

Appx. 9c

LUIS ALBERTO PENA	*	IN THE
Petitioner	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND	*	BALTIMORE COUNTY
Respondent	*	Case No.: K-01-0468

* * * * * * * * * * * * *

ORDER

This matter came before the Court on January 18, 2017, for a hearing on Luis Alberto Pena's Petition for Writ of Error Coram Nobis (Paper No. 8,000), filed on July 28, 2016. The State's Answer and Request to Dismiss Without a Hearing Petition for Writ of Error *Coram Nobis* (Paper No. 8,001) was filed on October 14, 2016. After consideration of the entire file, including the pleadings filed, the transcripts provided, the arguments of Mr. Pena and the Assistant State's Attorney, and the relevant Rules, statutes and case law, this Court dictated its ruling, in accordance with Md. Rule 15-1207, into the record on January 18, 2017. For the reasons stated on the record, it is this 19th day of January, 2017, by the Circuit Court for Baltimore County,

ORDERED that the Petition for Writ of Error Coram Nobis filed on July 28, 2016, is hereby **DENIED** in its entirety. Mr. Pena failed to prove that his plea before the Honorable John Grason Turnbull II on September 11, 2001, was either unknowing or involuntary. He also failed to prove that, as a result of his plea before Judge Turnbull, he is facing significant collateral consequences.

The Honorable Judith C. Ensor
Circuit Court for Baltimore County