Appendix (A)

Circuit Court for Anne Arundel County
Case No. 02-K-12-001553

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1009

September Term, 2017

VERNON ALLEN COLLINS

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 22, 2019

*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.

Vernon A. Collins appeals the Circuit Court for Anne Arundel County's denial of his petition for writ of error coram nobis. There, he challenged his 1972 conviction for assault with intent to murder because the trial court instructed the jury that they were the judges of the law as well as the facts, and that the court's instructions on the law were "advisory only." Following a hearing held on July 6, 2017, where it was established that a transcript from the 1972 trial was never prepared and could not now be created, the circuit court denied the petition based on laches. For the reasons to be discussed, we affirm.

"ADVISORY ONLY" JURY INSTRUCTIONS

To put Collins's claim in context, we begin with a brief overview of the "advisory only" jury instructions. Article 23, paragraph one, of the Maryland Declaration of Rights states: "In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction."[1] To implement this provision, the Court of Appeals adopted a rule, which at the time of Collins's 1972 trial was numbered Rule 756b, that read in pertinent part: "The court shall in every case in which instructions are given to the jury, instruct the jury that they are the judges of the law and the court's instructions are advisory only."

The Court of Appeals addressed a challenge to the "advisory only" jury instructions in *Stevenson v. State*, 289 Md. 167 (1980), where the Court construed Article 23 as a limitation on the jury's role of deciding the law related to non-constitutional "disputes as to the substantive 'law of the crime,' as well as the 'legal effect of the evidence[.]'" *Id.* at

[1] At the time of Collins's trial, what is now Article 23 of the Declaration of Rights was then codified at Article 15, § 5 of the Maryland Constitution.

180. The *Stevenson* Court noted "that all other legal issues are for the judge alone to decide." *Id.* at 179. The majority of the Court also concluded that its interpretation of Article 23 did not, on its face, violate the Constitution of the United States. *Id.* at 181-88. And the Court held that its decision was not a new interpretation of Article 23, as it had "consistently interpreted this constitutional provision as restraining the jury's law deciding power to this limited . . . area." *Id.* at 178.

The Court of Appeals confirmed the *Stevenson* Court's interpretation of Article 23 the following year when it decided *Montgomery v. State*, 292 Md. 84 (1981), where the majority held that the jury's role as judge of the law "is limited to those instances when the jury is the final arbiter of the law of the crime." *Id.* at 89. The Court further noted that "[s]uch instances arise when an instruction culminates in a dispute as to the proper interpretation of the law of the crime for which there is a sound basis." *Id.*

In 2000, the United States Court of Appeals for the Fourth Circuit, in a habeas corpus case, addressed Maryland's advisory only jury instructions in *Jenkins v. Hutchinson*, 221 F.3d 679 (4th Cir. 2000). The Fourth Circuit held that Jenkins's due process rights under the Fourteenth Amendment to the United States Constitution were violated at his 1975 State of Maryland criminal trial when the trial judge instructed the jury that the judge's instructions were advisory. *Id.* at 681. The *Jenkins* Court noted that the trial judge had advised the jury that they were the judges of the law as well as of the facts and, "[w]ith each individual instruction, the court reminded the jury of the advisory nature of the instructions." *Id.* at 685. The Fourth Circuit then concluded "that there is a reasonable likelihood that the jury interpreted these instructions as allowing it to ignore the

'advice' of the court that the jury should find proof beyond a reasonable doubt." *Id.* Accordingly, the Court held that "the advisory instructions violated Jenkins' right to due process," *id.*, and affirmed the order of the district court granting Jenkins relief.

In *State v. Adams*, 406 Md. 240 (2008), *cert. denied*, 556 U.S. 1133 (2009), the Court of Appeals, in a post-conviction case, reiterated its holding in *Stevenson* that, under Article 23, the jury's role as judge of the law is limited "to the law of the crime" and that "all other legal issues are for the judge alone to decide." *Id.* at 256 (internal quotations omitted). The majority of the *Adams* Court also noted that the *Stevenson* Court's interpretation of Article 23 "did not announce new law[,]" *id.* at 258, and ultimately held that, by failing to object at trial to the advisory nature of the jury instructions, the issue of whether the instructions violated Adams's Fourteenth Amendment rights was waived for post-conviction purposes. *Id.* at 261.

In 2012, the Court of Appeals revisited the issue in *Unger v. State*, 427 Md. 383 (2012), a post-conviction case again challenging the advisory only jury instructions. The Court held that "the *Stevenson* and *Montgomery* opinions substantially changed the state constitutional standard embodied in Article 23" and thus, "failure to object to advisory only jury instructions in criminal trials prior to *Stevenson* will not constitute a waiver." *Id.* at 391. The *Unger* Court overruled "[t]hose portions of the Court's *Stevenson, Montgomery,* and *Adams* opinions, holding that the interpretation of Article 23 in *Stevenson* and *Montgomery* was not a new State constitutional standard, [as that was] erroneous[.]" *Id.* at 417.

The *Unger* Court observed that, "[u]ntil the *Stevenson* case in 1980, this Court's

opinions regularly emphasized the breadth of the jury's function of deciding the law in criminal cases." *Id.* at 413. The Court further noted that Rule 756b "made no exceptions to the requirement that juries be told that they are the judges of the law." *Id.* at 416. Finally, the Court held that "the trial judge's instructions at Unger's 1976 trial, telling the jury that all of the court's instructions on legal matters were 'merely advisory,' were clearly in error, at least as applied to matters implicating federal constitutional rights." *Id.* at 417. Accordingly, the Court concluded that the post-conviction court properly granted Unger a new trial. *Id.*

In *State v. Waine*, 444 Md. 692 (2015), the Court of Appeals declined to overrule *Unger*. At Waine's 1976 trial, the judge had informed the jury that,

> Under the Constitution and laws of the State, the jury in a criminal case is the judge of both the law and the facts and *anything I say to you* about the law is advisory only. It is intended to help you, but you are at liberty to reject the Court's advice on the law and to arrive at your own independent conclusion on it, if you desire to do so.

Id. at 697 (emphasis added). Waine did not object to the instructions. *Id.* Waine later challenged the advisory only instructions in a petition for post-conviction relief, which was denied. *Id.* at 697-98. In 2007, relying in part on the Fourth Circuit's decision in *Jenkins*, Waine reasserted his claim in a motion to reopen his post-conviction proceeding. *Id.* at 698. That motion "lay dormant until 2012" when the post-conviction court, following the publication of *Unger*, granted Waine's motion and awarded him a new trial. *Id.* After this Court denied, in an unreported opinion, the State's application for leave to appeal the post-conviction court's decision, the Court of Appeals granted the State's petition for writ of certiorari and affirmed. *Id.* at 699.

The *Waine* Court noted that

> Ambiguity is not the issue in Article 23 advisory only jury instructions; rather, such instructions are clear, but erroneous, as they give the jury permission to disregard any or all of the court's instructions, including those bedrock due process instructions on the presumption of innocence and the State's burden of proving the defendant's guilt beyond a reasonable doubt.

Id. at 704. The Court then held that "the trial court's giving the advisory only jury instruction was structural error not susceptible to harmless error analysis" and confirmed that Waine's 1976 conviction "must be vacated." *Id.* at 705.

The following year, the Court of Appeals decided *State v. Adams-Bey*, 449 Md. 690 (2016), in which it affirmed this Court's decision holding that the post-conviction court had abused its discretion in denying Adams-Bey's motion to reopen a closed post-conviction case in order to present his *Unger* claim. In Adams-Bey's 1978 trial in the Circuit Court for Anne Arundel County, the court gave the advisory only jury instruction and, among other things, instructed the jury that "should court and counsel appear to differ as to [the] law which is applicable, you should apply the law as you find it to be, not as you think it should be." *Id.* at 697. The court instructed the jury that, "you're advised that in this State an accused is entitled throughout the entire proceedings to the presumption of innocence" and further advised that the "burden is on the State to prove beyond a reasonable doubt not only that the offense was committed but also it was the defendant who is the person who committed these offenses." *Id.*

Upon appellate review of the post-conviction court's denial of Adams-Bey's motion to reopen his post-conviction proceeding to challenge the advisory only instructions, the

Court of Appeals rejected the State's contention that the advisory instructions given in Adams-Bey's trial "were unlike those at issue in *Unger* and *Waine*, in which the juries were told that they were at liberty to disregard the court's instructions." *Id.* at 704. Rather, the Court concluded that the jury instructions in *Adams-Bey* "were unquestionably advisory only instructions and, as a consequence of that structural error, [Adams-Bey] is entitled to a new trial." *Id.* at 705. The Court further stated that, to "render constitutional an advisory only instruction" the jury must also have been "inform[ed] that it [was] bound by the presumption of innocence and beyond a reasonable doubt standard." *Id.* To be clear, absent a specific instruction that the advisory only instruction did not pertain to those constitutional rights, the Court held that the giving of the advisory only jury instruction constituted structural error. *Id.* In closing, the Court stated that,

> It also bears emphasis, moving forward, that trial courts at the time of Respondent's [1978] trial were *required* to give an advisory instruction under both Article 23 and Maryland Rule 757b [before 1977, Rule 756b]. It is virtually certain that a court during that era would have given such an instruction and not effectively nullify it immediately thereafter by informing the jury of the binding nature of its instructions on constitutional matters.

Id. at 709.

With that history in mind, we turn to Collins's case.

BACKGROUND

Relevant Criminal History

In 1972, a jury sitting in the Circuit Court for Anne Arundel County convicted Collins of assault with intent to murder. The court sentenced him to five years'

imprisonment, to run consecutively to any outstanding sentence. He did not appeal; nor did he file a petition for post-conviction relief.

In 1987, in the United States District Court for the District of Maryland, Collins was convicted of several controlled dangerous substances offenses and two counts of illegal possession of a firearm.[2] Prior to sentencing, the United States Attorney filed a "notice of enhanced penalties" for the firearm convictions pursuant to 18 U.S.C. § 924(e). The notice apprised the court that Collins had three prior State of Maryland convictions, including the 1972 assault with intent to murder, and thereby was subject to an enhanced sentence.[3] In addition to the 1972 conviction in Anne Arundel County, the government relied on a 1966 guilty plea to robbery and a 1973 conviction for assault, both in the Circuit Court for Baltimore City. Collins was sentenced to fifteen years' imprisonment for the CDS offenses and to two terms of twenty years' imprisonment for the firearm offenses, to run

[2] In its decision affirming the judgment, the Court of Appeals for the Fourth Circuit noted that Collins had been described by an FBI informant as a "narcotics hit man who is feared throughout the narcotics underworld in Baltimore." *United States v. Taylor*, 857 F.2d 210, 212 (4th Cir. 1988).

[3] When Collins was sentenced in 1987, 18 U.S.C. § 924(e) provided (as it currently does) that a person convicted of possession of a firearm under 18 U.S.C. § 922(g) who has three previous convictions for "a violent felony or a serious drug offense" shall be "imprisoned not less than fifteen years" and the court "shall not suspend the sentence of, or grant a probationary sentence to, such person[.]" Absent three predicate convictions, the sentence for the firearm offense in 1987 was "not more than five years." Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 456 (codified as amended at 18 U.S.C. § 924 (1986)). Presently, the penalty is "not more than 10 years." 18 U.S.C. § 924(a)(2) (2017).

concurrently with each other but consecutively to the CDS sentences – a total term of thirty-five years. The convictions were affirmed on appeal. *United States v. Taylor*, 857 F.2d 210 (4th Cir. 1988). The court subsequently vacated one of the two firearm sentences. *See United States v. Collins*, 95 Fed. Appx. 505 (4th Cir. 2004).

After Collins was convicted and sentenced in federal court, he was tried and convicted in New Jersey for crimes committed in 1986. On May 5, 1989, the New Jersey Superior Court for Mercer County sentenced Collins to life imprisonment, "with a minimum parole ineligibility period of 25 years[,]" for possession of controlled dangerous substances with the intent to distribute and to a concurrent term of five years for unlawful possession of a weapon.[4] (Other convictions were merged.) The New Jersey sentence was ordered to run "consecutively with any other prison terms imposed by the State of Maryland on other matters."[5] The "statement of reasons" in support of the sentence, signed by the sentencing judge, stated:

> The within sentence was imposed because of the nature and circumstances of the offense and the role of the actor therein including the fact that the crime was committed in an especially heinous and depraved manner. Not only did this defendant possess with intent to distribute heroin, valued at over $250,000, but he was also reaching for a loaded 9 mm.

[4] The police searched a car in which Collins was a passenger following a traffic stop on the New Jersey Turnpike and recovered "heroin and a semi-automatic 9 millimeter handgun with a magazine clip of hollow-nosed ammunition." *See State v. Collins*, 2011 WL 691847, at *1 (N.J. Super. Ct. App. Div., Mar. 1, 2011).

[5] Based on the limited record before us, it is not clear whether Collins was serving a State of Maryland sentence when sentenced in New Jersey. As noted, at the time he was sentenced in New Jersey, Collins was serving the thirty-five year federal sentence imposed by the U.S. District Court for the District of Maryland.

> semi-automatic handgun when a State Trooper stopped him by use of his own gun.
>
> The risk that the defendant would commit another offense.
>
> In addition, there was not only a risk that the defendant would commit another offense, his background indicates that it is an absolute certainty he would commit another offense. This defendant has lived a life of violence and crime. The record establishes every indication that he would continue to do so.
>
> Furthermore, the sentence had to be imposed because of the extent of the defendant's prior criminal record and the seriousness of the offense of which he has been convicted. He has demonstrated throughout his entire life that he is a very serious threat to the safety of mankind and to all law abiding citizens.
>
> This was his 8th indictable conviction. He also has a terrible juvenile record. He has (2) previous convictions for Assault to Commit Murder.
>
> Finally, there was the obvious need to deter the defendant and others from violating the law.
>
> He is presently serving a 35 year sentence in Baltimore for drug charges including the employment of persons under the age of 18 years to assist him in the distribution of CDS.
>
> This is a man who must be removed from society for as long as the law allows.
>
> In addition, I reviewed the mitigating circumstances as contained in [the] Code and found that absolutely none of them existed.
>
> A term of parole ineligibility was imposed because I was clearly convinced that the aggravating circumstances substantially outweighed the non-existent mitigating circumstances.

The New Jersey judgments were affirmed on appeal. *State v. Collins*, No. A-5173-88 (N.J. Super. Ct. App. Div. July 21, 1992). It is not clear from the record before us when Collins began serving his New Jersey sentence, but it appears that he was released from federal custody in June 2005. Collins maintains that he is on parole in the federal case until 2022, a fact the State does not dispute.

Petition for Writ of Error Coram Nobis

In 2012, Collins filed a petition for writ of error coram nobis in the Circuit Court for Anne Arundel County challenging the 1972 conviction, which he later withdrew and refiled in March 2015. He claimed that both his 1987 federal sentence and the 1989 New Jersey sentence were "enhanced" as a result of the 1972 Anne Arundel County conviction. The State opposed the petition, disputing generally the collateral consequence, and raising laches as an affirmative defense. The circuit court denied the petition based on laches. On appeal, this Court agreed with Collins that the circuit court should have held a hearing before determining that his petition was barred by laches and, accordingly, we vacated the judgment and remanded the matter to the circuit court. *Collins v. State*, No. 1780, Sept. Term, 2015 (filed Jan. 12, 2017).

On July 6, 2017, the circuit court held a hearing to consider why the court "should not grant the State's request to dismiss [the] petition" based on laches. Collins argued that he could not have filed his petition prior to the *Unger* decision, which was filed on May 24, 2012 (reconsideration denied on August 16, 2012), because he had not objected to the jury instruction at trial and, consequently, he claimed he "didn't have any right to bring that issue because of the statutory law." Collins acknowledged that, because he had not appealed the 1972 conviction or sought to challenge it in a petition for post-conviction relief, a transcript from the 1972 trial had never been prepared and, given the passage of time, it was no longer possible to prepare one. Nonetheless, Collins maintained that "the judge gave those [advisory] instructions in every jury trial" and it was the State's burden to show that they were not given in his case.

The State asserted that Collins could have challenged the jury claim as early as 1980 when the constitutionality of the advisory instructions first came under scrutiny.[6] According to the State, "that's when the clock really would have start[ed] running." Moreover, the State maintained it would be a "leap of faith" to assume that the Collins jury was given the "advisory instructions" because "jury instructions were not nearly as uniform back then as they are today[.]" Finally, the State claimed that, if the 1972 conviction is vacated, it would be prejudiced in its ability to retry Collins given the passage of over forty years. The State noted that, "what is left over of these files is fairly sparse" and "the State, to the extent that we even know who the witnesses are, would not be able to produce any of them, would not be able to retry him." Collins replied that, "[w]e don't know exactly what [the judge] said, but we know that it was statutory law that you give those instructions in a jury case." Collins further claimed that the State would not be prejudiced because he had already served the five-year sentence and "[e]ven if they retried it, they can't give me the time back."

The court credited the State's assertions that it was not possible to obtain or create a transcript or "even feasible to reconstruct the record" at this point in time. Because there was no transcript, the court found that "[t]here's no way we can adequately address what instructions were or were not given." The court also concluded that "there was unnecessary delay in the filing of [the] petition" and "the State was prejudiced" by that delay and, accordingly, granted the State's motion to dismiss based on laches.

[6] The State presumably was referring to *Stevenson* and *Montgomery*.

DISCUSSION

Standard of Review

We review a circuit court's ultimate ruling on a coram nobis petition for an abuse of discretion. We review *de novo* legal determinations, and will not disturb the coram nobis court's factual findings unless clearly erroneous. *State v. Rich*, 454 Md. 448, 471 (2017). We review "without deference" the circuit court's "conclusion as to whether the doctrine of laches" bars coram nobis relief. *Jones v. State*, 445 Md. 324, 337 (2015).

The Writ of Error Coram Nobis

"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*.'" *Rich*, 454 Md. at 461 (quoting *Smith*, 443 Md. at 597). 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)). "[A] presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner." *Skok*, 361 Md. at 78.

Laches

"The doctrine of laches, which is both an affirmative defense and an equitable defense, applies where there is an unreasonable delay in the assertion of one party's rights and that delay results in prejudice to the opposing party." *Jones*, 445 Md. at 339 (quotation

marks and brackets deleted; citation omitted). The burden of proving laches, by a preponderance of the evidence, is on the party asserting the defense. *Id.* There is no question that the doctrine "may bar the right to seek coram nobis relief." *Id.* at 343.

"Whether laches applies depends on an evaluation of each case's particular circumstances." *Id.* at 339. Generally, prejudice is anything that disadvantages the opposing party or puts the opposing party in "a less favorable position." *Id.* at 340 (quotation omitted). "The passage of time, alone, does not constitute laches, and is simply one of the many circumstances from which a determination of what constitutes an unreasonable and unjustifiable delay may be made." *Id.* at 339-40 (quotation and brackets omitted).

Contentions

Collins first asserts that the circuit court erred in concluding that there had been an "unnecessary delay" in the filing of his petition for coram nobis relief. He points out that, when he was tried in 1972, the court was obligated by Rule 756b to inform the jury that they were "the judges of the law and that the court's instructions are advisory only." Thus, he maintains that while he was serving his sentence in this case "there was no incentive to collateral[ly] attack the 1972 conviction through post[-]conviction proceedings" because various Maryland appellate decisions over the years had recognized the validity of the advisory only instructions. In short, he insists that his claim was not cognizable until the Court of Appeals decided *Unger* in 2012 and shortly thereafter he filed his petition for coram nobis relief. Accordingly, he maintains that "[t]he delay was excusable since he had

been impeded from actually collaterally attacking the 1972 conviction upon a claim of the unconstitutionality of advisory only instructions, for some 40 years."

Collins next asserts that the circuit court erred in concluding that the passage of time had prejudiced the State. He maintains that his inability to produce the transcript from the 1972 trial to determine whether the advisory only jury instruction was in fact given is "not only preposterous but in conflict with appellate case law" that recognized that "all Maryland judges uniformly instructed jurors the court's jury instructions were advisory only as Md. Rule 756b mandated." He cites, among other decisions, *Adams-Bey*, 449 Md. at 709, where the Court of Appeals noted that it was "virtually certain that a court during that era would have given such an instruction."

The State responds that the circuit court "properly exercised its discretion when it denied Collins's coram nobis petition." Although noting that a "presumption of regularity attaches to the criminal case," the State maintains that "there is no basis to assume that the court gave advisory jury instructions to Collins's jury in 1972." Moreover, the State asserts that Collins could have filed his coram nobis petition "regardless of when *Unger* was decided . . . even if he might have been unsuccessful." "This is important," the State continues, "because the problem in this case has been the lack of a transcript" and if he had pursued his claim "after the Court of Appeals decided *Stevenson v. State*, 287 Md. 167 (1980), his complaint would have resulted in a transcript of his trial." Without a transcript, the State insists that Collins "cannot prove his claim" that the court in his trial "issued the jury advisory instruction."

The State also maintains that the circuit court did not err in concluding that the State was prejudiced by the delay. The State asserts that the lack of a transcript "precludes the State from defending against Collins's complaint on the basis that advisory instructions were not given in this case because neither the State nor Collins's counsel requested any." In other words, the State reiterates that "there is no basis to assume" that the trial court in fact gave the advisory only jury instruction and, without a transcript, the State is impeded from making such a claim.

In addition, the State claims that the delay has "prejudiced the State in its ability to mount another prosecution" in the event Collins is granted relief. According to the State, the "sparse" record consists of "the indictment, docket entries, motions for discovery and responses, including a witness list (without annotation as to the nature of the witness's possible testimony), the jury list and the victim's medical records." "Given the paucity of the records," the State asserts that "the task of proving beyond a reasonable doubt what occurred during the assault and Collins's involvement in it [would be] severely hampered."

Even if laches is not applicable to bar Collins's requested relief, the State urges us to affirm because Collins is "not facing significant collateral consequences from his 1972 conviction." Although the State acknowledges that the circuit court did not address Collins's collateral consequence claim, the State nonetheless suggests that on this record we can do so.[7]

[7] Based on the record before us, we are not convinced that we can adequately review whether Collins is serving an enhanced sentence based, at least in part, on the 1972 Maryland conviction at issue in this case.

Analysis

Initially, we note that prior to the Court of Appeals' decision in *Skok*, coram nobis relief was only available in Maryland in limited circumstances to correct a factual error that led to a final judgment. *Skok*, 361 at 66-70. Collins, therefore, could not have filed a petition for writ of error coram nobis challenging the alleged giving of the advisory only jury instruction in his 1972 trial prior to the *Skok* Court's expansion of the writ in 2000.[8] Thus, in our view, Collins's delay in filing his petition for coram nobis relief should not be held against him during the first two decades following his conviction. *See Jones*, 445 Md. at 342 ("For a delay to constitute laches, the delaying party must have had notice of a right or cause of action.") (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 118 (2000)).

But two significant decisions were issued in 2000: (1) the Court of Appeals' decision in *Skok*, expanding the writ of error coram nobis to include challenges to criminal convictions on constitutional or fundamental grounds where no other remedy is available, and (2) the Fourth Circuit's decision in *Jenkins*, holding that Maryland's advisory only jury instructions had violated Jenkins's right to due process in his State of Maryland criminal trial. Hence, with the publication of those decisions, Collins was "on notice" of his potential cause of action to challenge the 1972 conviction. *Jones, supra,* 445 Md. at 344 (stating that for laches, "delay begins when a petitioner knew or should have known of the facts underlying the alleged error."); *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438

[8] We are mindful of the fact that Collins could have appealed his conviction or sought post-conviction relief, but did neither.

Md. 451, 590 (2014) ("In determining whether a delay is unreasonable, we must analyze [] when, if ever, the claim became ripe (*i.e.*, the earliest time at which [the petitioners] were able to bring their claims)[.]") Here Collins waited another twelve years (until 2012) to file his petition for writ of error coram nobis — a delay we readily conclude was unreasonable.

We turn now to whether the State was prejudiced by Collins's delay in filing his action. The coram nobis court credited the State's assertions that it was not possible to obtain or create a transcript of the 1972 trial or "even feasible to reconstruct the record" at this point in time. The State also informed the court that, "what is left over of these files is fairly sparse" and "the State, to the extent that we even know who the witnesses are, would not be able to produce any of them, would not be able to retry him."

Pursuant to *Adams-Bey*, we assume that the trial court gave the advisory only instruction at Collins's trial. Nevertheless, we hold that Collins's delay in filing his petition hampered the State's ability to re-prosecute Collins in the event he succeeded in overturning the 1972 conviction. By 2000, approximately twenty-eight years had elapsed since his 1972 conviction. That Collins waited an *additional* twelve years to file his coram nobis petition exacerbated the State's already disadvantaged position to the prejudice of the State. *Jones*, 445 Md. at 357 ("for purposes of determining whether laches bars an individual's ability to seek coram nobis relief, prejudice involves not only the State's ability to defend against the coram nobis petition, but also the State's ability to reprosecute."). Moreover, because Collins never obtained a transcript of the 1972 proceedings, the State would be unable to utilize the former testimony exception to the

hearsay rule for any witnesses who may have testified at Collins's 1972 trial but who are now unavailable. *See* Rule 5-804(b)(l). Because the delay placed the State in "a less favorable position," *id.* at 340, the prejudice component of the laches doctrine was established.

Accordingly, we hold that the coram nobis court did not err in ruling that Collins's request for coram nobis relief was barred by the doctrine of laches.

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

Appendix (B)

VERNON A. COLLINS	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
v.	*	**COA-PET-0141-2019**
	*	**CSA-REG-1009-2017**
STATE OF MARYLAND	*	**(No. 02-K-12-001553, Circuit Court for Anne Arundel County)**

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 26, 2019