App. (A)

Supreme Court of Maryland

Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

Gregory Hilton,
Clerk

(410) 260-1500
(800) 926-2583

May 23, 2025

NOTICE OF ORDER

Antonio B. Jackson v. State of Maryland
Petition No. 30, September Term, 2025

On May 23, 2025, the Court entered an order[1] denying the petition for writ of certiorari in this Court.

/s/ Gregory Hilton
Clerk

Copy to: All counsel of record
Any unrepresented parties
Clerk, Appellate Court of Maryland
Clerk, Circuit Court

[1] The Court's order can be viewed online at https://www.mdcourts.gov/scm/petitions.

App C

PETITIONS FOR WRIT OF CERTIORARI

IN THE

SUPREME COURT

OF MARYLAND

September Term, 2024[1]

ORDER

It is this 23rd day of May 2025, by the Supreme Court of Maryland,

ORDERED that the following petitions for writ of certiorari are denied:

Pet. No. 462 – Clarence Hicks v. Burch Investments, LLC

Pet. No. 479 – Marie Anderson v. Mint Mobile LLC
Justice Killough did not participate in the consideration of this matter.

Pet. No. 489 – Mauricio Guzman v. Katherine Drouliskos, et al.

Pet. No. 491 – In the Matter of Nicholas Kegg
Motion to Transfer denied.

Pet. No. 498 – Elizabeth Johnson v. Reflection Knoll, LLLP

Pet. No. 500 – In Re: The Estate of Rita Anne Rader

Pet. No. 1* – MKOS Properties, LLC v. Bradley W. Johnson, et al.

Pet. No. 3* – Blake A. Bailey, Sr. v. Tracy Rochelle Smith

Pet. No. 4* – Charles Stanton v. The Church of The Living God

Pet. No. 5* – Charles Johnson v. Choice Home Warranty

Pet. No. 9* – Nicole Y. Winston v. Prince George's County Department of Health, et al.

Pet. No. 11* – Devin Grey Linn v. State of Maryland

Pet. No. 12* – Yariel Jose Rosa v. State of Maryland

Pet. No. 13* – In the Matter of Thomas George Gleason

Pet. No. 16* – Jhatavus Lamar McKnight v. State of Maryland

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[1] All petitions and motions were filed in September Term 2024 unless otherwise indicated. Petitions and motions indicated with * were filed in September Term 2025.

Pet. No. 20* – Daya Jones v. State of Maryland

Pet. No. 21* – HSU Contracting, LLC v. The Holton-Arms School, Inc.
Request for sanctions is denied.

Pet. No. 22* – Ndokley Peter Enow v. State of Maryland

Pet. No. 24* – Barry Bluefeld v. Annuity Associates, Inc., et al.

Pet. No. 27* – Stephen Nivens v. State of Maryland

Pet. No. 30* – Antonio B. Jackson v. State of Maryland

Pet. No. 32* – Butchie Junior Stemple v. State of Maryland

Pet. No. 34* – James Burton Rosenfield v. Sheila Harnik

Pet. No. 36* – Andre Chavis v. State of Maryland

Pet. No. 46* – In the Matter of Justin Holder

And it is further

ORDERED that the following petitions for writ of certiorari are dismissed:

Pet. No. 463 – Louis J. Bynum v. State of Maryland
Pursuant to § 12-202 of the Courts and Judicial Proceedings Article, the petition for writ of certiorari is dismissed for lack of jurisdiction.

Pet. No. 490 – Otabek Elmurodov v. University of Maryland Capital Region Health Program
Pursuant to Md. Rule 8-602(b)(1), the petition is dismissed as not allowed by law.
Justices Biran and Killough did not participate in this matter.

Pet. No. 492 – Khai Bui v. David Lee McAllister
Petition is dismissed as untimely filed.

Pet. No. 494 – Patrick Thomas v. State of Maryland
Petition is dismissed as untimely filed.

Pet. No. 495 – Carlos Alberto Canales Tabora v. State of Maryland
Petition is dismissed as untimely filed.

Pet. No. 496 – In the Matter of Micah Hill
Petition is dismissed as untimely filed.
Justice Killough did not participate in the consideration of this matter.

Pet. No. 502 – In the Matter of Jacquelyn Hicks, et al.
Petition is dismissed for failure to pay the required filing fee.

Pet. No. 2* – Norris Bernard Ellis v. State of Maryland
Petition is dismissed as untimely filed.

Pet. No. 8* – Ikiem Smith v. State of Maryland
Pursuant to § 12-202 of the Courts and Judicial Proceedings Article, the petition for writ of certiorari is dismissed for lack of jurisdiction.

Pet. No. 10* – James A. Blake v. State of Maryland
Pursuant to § 12-202 of the Courts and Judicial Proceedings Article, the petition for writ of certiorari is dismissed for lack of jurisdiction.

Pet. No. 14* – James Berry v. State of Maryland
Pursuant to § 12-202 of the Courts and Judicial Proceedings Article, the petition for writ of certiorari is dismissed for lack of jurisdiction.

Pet. No. 18* – In the Matter of Quennel Qudry Quiamaichelo
Petition is dismissed as untimely filed.

Pet. No. 19* – Michael D. Fleming v. Freedom Mortgage
Petition is dismissed as untimely filed.

Pet. No. 23* – Piotr Piasecki v. Carrie M. Ward, et al.
Petition is dismissed for failure to pay the required filing fee.

Pet. No. 61* – Shaunesi Y. DeBerry v. State of Maryland
Petition and motions are dismissed for failure to pay the required filing fee.

And it is further

ORDERED that the motions for reconsideration filed in the following matters are denied.

Pet. No. 396 – Jerome McBride v. State of Maryland

Pet. No. 429 – Notheron N. Clarke v. State of Maryland

/s/ Matthew J. Fader
Chief Justice

App. B

Circuit Court for Baltimore City
Case Nos.: 193106007 & 193106008

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0335

September Term, 2024

ANTONIO JACKSON

v.

STATE OF MARYLAND

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 10, 2025

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

App D

On November 8, 1993, following trial in the Circuit Court for Baltimore City, a jury found Antonio Jackson, appellant, guilty of first-degree murder, attempted second-degree murder, and related offenses. On January 4, 1994, the court sentenced him to life imprisonment plus 35 years. He took a direct appeal to this Court and we affirmed. *Jackson v. State*, No. 1898, Sept. Term, 1993 (filed unreported October 20, 1994) (*Jackson I*).

Nearly two decades later, on October 10, 2012, appellant filed a petition for a writ of actual innocence which, on November 26, 2012, the circuit court denied without holding a hearing. Appellant took an appeal to this Court from that denial. In an unreported opinion, we vacated the order denying the petition and remanded the case to the circuit court for it to hold a hearing. *Jackson v. State*, No. 2176, Sept. Term, 2012 (filed June 11, 2015) (*Jackson II*).

On November 23, 2015, upon remand, the circuit court held a hearing on appellant's petition for a writ of actual innocence. During that hearing, the parties explained that they had agreed to a negotiated resolution of the case whereby the State would not oppose the vacating of appellant's convictions, and appellant would plead guilty and be sentenced to life imprisonment with all but 30 years suspended in favor of five years' probation.[1] The circuit court agreed to be bound to that agreement, and, accordingly, it thereafter granted appellant's petition, vacated his convictions, accepted appellant's guilty plea to first-degree

[1] We shall explain more details about appellant's petition, and the events that occurred during the hearing on it, as they become germane to our discussion.

murder, and sentenced him to life with all but thirty years suspended in favor of five years' probation.[2]

Nearly eight years later, on November 2, 2023, appellant, acting *pro se*, filed a petition for a writ of error coram nobis attacking his 2015 guilty plea on various grounds. On February 29, 2024, the court denied that petition in all respects without holding a hearing on it. Appellant, still acting *pro se*, noted an appeal from that denial and presents us with the following question which we have re-phrased and condensed for clarity:[3] Did the court abuse its discretion in denying appellant's petition for a writ of error coram nobis?

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

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[2] In its Brief of Appellee, the State asserts that appellant's sentence was "essentially time served." Appellant does not dispute that assertion.

[3] Appellant presented his questions to us as follows:

1. Did the coram nobis court's *sua sponte* denial of coram nobis relief on grounds the petition lacked proof appellant was facing or suffering significant collateral consequences constitute an abuse of discretion?
2. Did the coram nobis court[] failure [sic] to consider and rule upon the six allegations of significant collateral consequences alleged in the petition?
3. Did the coram nobis court erred [sic] and abuse its discretion in erroneou[s]ly concluding appellant was not denied ineffective assistance of counsel?
4. Did the coram nobis court['s] failure to hold a hearing based upon its erroneous reliances [sic] on the created significant collateral consequences not alleged in the petition constitute an abused [sic] of its discretion?

BACKGROUND

Factual Background

We briefly outlined the factual background of this case in *Jackson II*, as follows:

> On February 10, 1993, in Baltimore City, Wilson Staples and Andre Ford were shot. Staples died of his wounds. Ford recovered. [Appellant] was arrested and charged with crimes arising out of the shootings. At a jury trial in the Circuit Court for Baltimore City the primary witness against Jackson was Sion Ford, a relative of Andre Ford. He identified "Bay-Boy" – Jackson's street name – as the shooter. The defense was one of mistaken identity. Jackson testified that he was not in the area of the shooting when it took place.

Jackson II, slip op. at 1.

2012 Petition for a Writ of Actual Innocence

In *Jackson II*, we explained that, in 2012, appellant filed a petition for a writ of actual innocence based on documents he claimed to have received from the Baltimore City State's Attorney's Office pursuant to a request he had made in accordance with the Maryland Public Information Act. He claimed that those documents amounted to newly discovered evidence within the meaning of a petition for a writ of actual innocence. One of those documents was a lined page torn from a spiral notebook containing what appeared to be "the handwritten notes of a police officer or medic who was present with victim Staples soon after the shooting, when he was lying in the street suffering from a gunshot wound." Written in the margin of the paper were the words "'Little puppy' did it" which appeared to "memorialize a statement that was made by Staples, informing the officer or medic of the identity of the shooter." *Jackson II,* slip op. at 4-7, 10.

As noted earlier, the circuit court denied appellant's petition without a hearing, and we vacated that order and remanded the matter to the circuit court to conduct a hearing because "with regard to the 'Little puppy' paper, [appellant] adequately pleaded the existence of newly discovered evidence that could not have been discovered in time to move for a new trial under Rule 4-331, and that created a substantial or significant possibility that the result of his trial would have been different." *Jackson II*, slip op. at 10-11.

The 2015 Hearing on Appellant's Petition Upon Remand from this Court

Near the outset of the November 23, 2015 hearing on appellant's petition for a writ of actual innocence, the State, and counsel for appellant, announced to the court that they had "reached a resolution" to appellant's petition. As explained earlier, under that resolution, the court would grant appellant's petition and vacate his convictions, appellant would then plead guilty to first-degree murder, and the court would sentence appellant to life with all but 30 years suspended. Before agreeing to be bound to the agreement, the court called counsel for appellant and the State to the bench and told appellant: "[Y]ou can have a seat."

During the ensuing bench conference, which appellant did not attend, the court inquired of the parties "is there more to this than this?" and "is there more of a back story?" In response, the State briefly summarized the evidence adduced during appellant's 1993 trial, and appellant's counsel explained, among other things, the existence of the "Little puppy" paper described earlier. The court questioned appellant's counsel about the circumstances of appellant's acquisition of the document and questioned whether, or how,

it could potentially be admitted into evidence under the dying declaration exception to the hearsay rule.[4]

The court established that the State was conceding that, if the "Little puppy" paper were admissible as a dying declaration, "that would be something that would have a substantial significant possibility to [affect] the verdict." The State explained that, were the parties to litigate the merits of appellant's petition, and were the court to grant appellant's petition, it was concerned that appellant would be "walking" presumably due, *inter alia*, to the difficulties in re-trying the case so many years after the original trial in 1993.

Thereafter, appellant's counsel explained that appellant had originally wanted to proceed with litigating his petition "[b]ut then I think common sense (inaudible 03:15:19) I want to go home and see my grandchildren. That was basically it." The court then concluded the bench conference by saying "[o]kay, okay. I just want to understand."

After the bench conference concluded, the following occurred in open court:

> THE COURT: All right. So we can set up the appropriate context here. So for the record then, the State is conceding, 1), that this is newly discovered evidence, and 2), that . . . this evidence would provide a substantial or a significant possibility that the verdict would have been affected had this evidence been known at the time, correct?
>
> [THE STATE]: Yes, Your Honor.

[4] Maryland Rule 5-804(b)(2), titled "Statement Under Belief of Impending Death," provides that "[i]n a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death" is not excluded by the hearsay rule if the declarant is unavailable as a witness.

THE COURT: Okay. And obviously you're not contesting that either, right?

[DEFENSE COUNSEL]: No, Your Honor.

THE COURT: Okay. So for the record then, I will find, based on that concession, that in fact I will grant the petition. I will order a new trial. Now, we are [at] the trial stage. It's my understanding, again, [appellant] is going to plead guilty to first-degree murder. I am going to impose a sentence of life suspend all but 30 years, followed by five years[']' supervised probation. And I will date the 30 years from March 8th, 1993. Is that everybody's understanding of the plea?

[THE STATE]: Yes, Your Honor.

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Okay. All right.

The court then thoroughly examined appellant about pleading guilty and the rights he was waiving by doing so. Thereafter, the court found that appellant's guilty plea was knowingly and voluntarily entered. After the State read its statement of facts in support of the guilty plea, the court entered its guilty finding for first-degree murder. As noted earlier, the court then sentenced appellant to life with all but 30 years suspended in favor of five years' probation.

Appellant did not seek leave to appeal from his guilty plea.

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). Relief is "justified only under

circumstances compelling such action to achieve justice." *State v. Rich*, 454 Md. 448, 461 (2017) (cleaned up).

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 Petition for a Writ of Error Coram Nobis

On November 2, 2023, appellant, acting *pro se*, filed a petition for a writ of error coram nobis in the circuit court. In his petition, he argued, *inter alia*, that he was denied his right to effective assistance of counsel when his lawyer (1) failed to ensure his presence at the bench conference that took place before he pleaded guilty, (2) failed to tell him that, during that bench conference, the State had conceded that he would "walk" if they had to re-try the case, (3) failed to object to the court's conclusion that his guilty plea was voluntarily made, and (4) failed to object to the allegedly insufficient factual basis for the

plea.[5] In his petition, appellant alleged that he was facing a wide range of significant collateral consequences from his conviction in this case.

The Denial of Appellant's Coram Nobis Petition

As noted earlier, on February 28, 2024, without holding a hearing, the circuit court denied appellant's petition by way of a written memorandum opinion and order.

The court found that appellant had met some, but not all, of the aforementioned 'gatekeeping' criteria for obtaining coram nobis relief. Specifically, the court found that appellant had established (1) that his claims were based on constitutional or fundamental grounds, (2) that he had not waived his claims, and (3) that, because he was no longer incarcerated, on parole, or on probation for the first-degree murder he pleaded guilty to in this case, he had no other remedy available.

However, the court found that appellant did not suffer from significant collateral consequences within the meaning of the relevant case law and was not therefore eligible for coram nobis relief. In any event, even though the court had determined that appellant had not met all of the gatekeeping criteria for coram nobis relief, the court addressed each of appellant's claims of ineffective assistance of counsel and found that all lacked merit.

[5] Appellant also raised a claim of ineffective assistance of counsel for not properly preparing for the hearing on his petition for actual innocence. Specifically, appellant claimed that his attorney had not interviewed the police officer or medic who had allegedly written down the victim's dying declaration that "Little puppy" killed him. The coram nobis court denied relief on this claim on the basis that it became moot when the court vacated his convictions and appellant pleaded guilty. Appellant does not challenge that ruling in this appeal.

The court collectively addressed appellant's contentions of ineffective assistance of counsel for allegedly (1) failing to ensure his presence at the bench conference that took place before he pleaded guilty, (2) failing to tell him that, during that bench conference, the State had conceded that he would "walk" if they had to re-try the case, and (3) failing to object to the court's conclusion that his guilty plea was voluntarily made.

The court found that, given all that occurred on the record during the November 23, 2015 hearing, appellant was well-aware that the State may have difficulty re-trying him even if appellant was not specifically made aware of the State's concern expressed during that bench conference about appellant "walking". This was so, according to the court, because on the record appellant was told, among other things, that the State had conceded, and the court had found, that the "Little puppy" document created a significant or substantial possibility of a different result at trial. The court noted "[t]he petitioner wants this court to believe that the statement made by the prosecutor was a statement that he would be exonerated, and the court is not willing to make that leap." Relying on *Santobello v. New York*, 404 U.S. 257, 261 (1971), the court observed that "[p]lea agreements eliminate many of the risks, uncertainties, and practical burdens of trials."

Next, the court addressed appellant's ineffective assistance of counsel claim which asserted that his counsel should have objected to the statement of facts proffered by the State in support of appellant's guilty plea. According to appellant, that statement of facts was objectionable because it made no mention of the deceased victim's dying declaration identifying "Little puppy" as his killer. As a result, according to appellant, his guilty plea was not therefore entered voluntarily. The coram nobis court noting, *inter alia*, that the

purpose of the factual basis is to ensure that defendant does not plead guilty "without realizing that his conduct does not actually fall within the charge" found the factual basis sufficient in this case.

Finally, the coram nobis court, after recognizing that coram nobis relief may not be granted without holding a hearing, and after observing, among other things, that coram nobis relief is an extraordinary remedy which is reserved for "circumstances compelling such action to achieve justice[,]" determined, in its discretion, to not hold a hearing on appellant's petition for a writ of error coram nobis.

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. *Rich*, 454 Md. at 470-71. "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 by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* at 418-19 (cleaned up).

Collateral Consequences

On appeal, appellant, again acting *pro se*, asserts that the coram nobis court erred in a variety of ways. For example, appellant contends that the coram nobis court failed to

address the specific collateral consequences that he had asserted, and instead addressed collateral consequences that he did not assert. It is not necessary for us to address all of appellant's perceived errors in the coram nobis court's decision with respect to the collateral consequences he asserted because, as will be seen, regardless of those alleged errors, our affirmance of the coram nobis court's decision on the merits of appellant's ineffective assistance of counsel claims is dispositive of this appeal.

Ineffective Assistance of Counsel Claims

To prevail on a claim of ineffective assistance of counsel under the Sixth Amendment, the claimant must prove that his defense counsel's performance was deficient and caused him to suffer prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Whether a lawyer's performance was deficient is decided based on "an objective standard of reasonableness[.]" *Syed v. State*, 463 Md. 60, 75 (2019). "In light of that objective standard, judicial scrutiny of counsel's performance is highly deferential, and there is a strong (but rebuttable) presumption that counsel rendered reasonable assistance." *Id.* (cleaned up).

In the context of a guilty plea, to prove prejudice, the claimant "must show that but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Yoswick v. State*, 347 Md. 228, 245 (1997) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). "[T]he [court's prejudice] analysis should be made objectively, without regard for the idiosyncrasies of the particular decisionmaker." *Yoswick*, 347 Md. at 245 (citation and quotation marks omitted).

"[C]ourts need not consider the performance prong and the prejudice prong in order, nor do they need to address both prongs in every case." *Newton v. State*, 455 Md. 341, 356, (2017). "As the *Strickland* Court explained, 'If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.'" *Id.* (quoting *Strickland*, 466 U.S. at 697).

Appellant argues, for many different reasons, that the coram nobis court erred in finding that he was not denied his right to effective assistance of counsel. His argument continues to be that his lawyer made a prejudicial serious attorney error in not telling him about the State's 'concession' during the bench conference, which, according to him, made his guilty plea involuntary because, had he known about the State's concerns, he would not have pleaded guilty and instead insisted on going to trial.

In our view, appellant's guilty plea was not rendered involuntary from any supposed error of his counsel with respect to his absence from the bench conference because, as the coram nobis court found, (1) he reads too much into the State's concerns expressed at the bench, and (2) from what was told to him on the record during the proceedings he was made aware that the State would have difficulty re-trying his case. Moreover, appellant's argument takes an overly myopic view of the nature of the guilty plea agreement in this case. His argument totally ignores the fact that a major part of the negotiated resolution of his case involved the grant of his petition for a writ of actual innocence and having his convictions vacated. He chooses to place his analytical starting point immediately after the court vacated his convictions, as if vacating his decades old conviction were immaterial to the guilty plea proceedings.

Appellant ignores the reality that, had the negotiated agreement been rejected by anyone (the court, the State, or even himself), a hearing would have then taken place on his petition for a writ of actual innocence – and there was no guarantee that he would have prevailed on his petition. In other words, it is clear enough to us, that everyone traded risk in the negotiated resolution of the case. Among other things, the State traded appellant's lowered sentence and risk that it would not prevail at a retrial for the certainty of appellant's conviction *via* guilty plea, and appellant traded the risk that he would not prevail on the petition for a writ of actual innocence, and at a potential retrial, for the certainty of a time-served sentence and the release from prison after decades of confinement.

As a result, appellant has not proven that he was prejudiced by any perceived error of counsel as he has not shown that but for counsel's supposed error in not informing him of what occurred during the bench conference, there is a significant possibility that he would have rejected the negotiated resolution of his case and demanded to proceed on the merits of his petition for a writ of actual innocence.

Moreover, we find meritless appellant's contention of ineffective assistance of counsel for not raising the issue that the factual basis for the plea was allegedly inadequate because it contained no reference to the "Little puppy" paper. We are unaware of any authority requiring that the factual basis for a guilty plea contain any reference to potentially exculpatory facts as appellant suggests. As a result, trial counsel made no error. In addition, we are persuaded that, had his counsel objected, and had the factual basis contained the reference to the dying declaration, there is not a significant possibility that

appellant would have rejected the negotiated resolution of his case and demanded to proceed on the merits of his petition for a writ of actual innocence.

Hearing

Finally, appellant claims that the coram nobis court abused its discretion in declining to hold a hearing on his petition. Essentially, appellant asserts that, had the court not made the errors he complains of, it would have been required to hold a hearing on his petition. We are not persuaded this is so.

As noted earlier, the coram nobis court acknowledged the fact that Maryland Rule 15-206(a) permits the court to deny a coram nobis petition without a hearing but does not permit the court to grant such a petition unless the court holds a hearing. The court also recognized that coram nobis relief is an extraordinary remedy. From that standpoint, the court declined to hold a hearing, and, thereby, declined to grant appellant's petition.

We discern no abuse of discretion in determining that appellant's case did not warrant the extraordinary remedy available through a petition for a writ of error coram nobis. Such relief is only required to be granted under circumstances "compelling such action to achieve justice." *Vaughn*, 232 Md. App. at 429 (citation and quotation marks omitted). In our view, this case does not compel such an extreme remedy.

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.

ANTONIO JACKSON,	*	**IN THE**
	*	
Petitioner	*	**CIRCUIT COURT**
	*	
v.	*	**FOR**
	*	
STATE OF MARYLAND,	*	**BALTIMORE CITY**
	*	
Respondent	*	**CASE NOS: 193106007, 008**
	*	
	*	**(Coram Nobis)**

ORDER

Upon the consideration of Petitioner, Petition for Writ of Error Coram Nobis, it is hereby ordered this 28th day of **February**, 2024 that the Petitioner's request is **DENIED**.

Judge Melissa K Copeland
Judge's Signature appears on
the original document
Judge of the Circuit Court of Baltimore City

Cc: court file

TO THE CLERK OF THE COURT:
Please provide copies to the following parties:

App A I

ANTONIO JACKSON,	*	**IN THE**
Petitioner	*	**CIRCUIT COURT FOR**
v.	*	**BALTIMORE CITY**
STATE OF MARYLAND,	*	**CASE NOS.: 193106007,008**
Respondent	*	**(Coram Nobis)**

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

MEMORANDUM

This matter comes before this court upon petitioner's Petition for Writ of Error *Coram Nobis* pursuant to Maryland Rules 15-1201 through 15-1207 filed in the Circuit Court for Baltimore City. The motion was filed on November 2, 2023. Antonio Jackson (hereinafter referred to as "Petitioner") alleges that his conviction is invalid because of ineffective assistance of counsel and request that this Court vacate his sentence and hold a hearing on the petition for writ of error *Coram Nobis*. The State did not file an answer to the Petition.

ALLEGATION OF ERRORS

Petitioner claims ineffective assistance of counsel as a result of counsel's:

1. Failure to interview the police officer and medics in preparation for the actual innocence hearing to testify during the actual innocence hearing relative to the dying declaration of Wilson Staples, that exonerated Mr. Jackson as the person who shot him by identifying another person as the shooter, i.e., "Little puppy";
2. Failing to advise Mr. Jackson of his constitutional right to be present at the bench conference; and
3. Failure to object to the court unfairly barring his present (presence) and participation in a bench conference involving a critical stage of the plea-bargaining negotiation proceedings;

App. B II

4. Failing after the bench conference had concluded to advise him of the concession reach(ed) between the court and prosecution, and inquiry of him before pleading guilty whether he still was willing to plea or proceed with the petition's merits for a new trial, and insisted on going to trial; and

5. Failing to object to the court's conclusions the "fully plea" was voluntarily entered, and factual basis for the plea sufficient to find beyond a reasonable doubt he committed first degree murder."

I. Writ of Coram Nobis

A. Burden of Proof

A petition for writ of error coram nobis is an independent, civil action that a convicted individual, who is neither serving a sentence nor on probation or parole, may bring to collaterally challenge a criminal conviction. *Skok v. State,* 361 Md. 52, 65, 80, 760 A.2d 647 (2000). Coram nobis relief is, however, "extraordinary," *id.* at 72, 760 A.2d 647 (quoting *United States v. Morgan,* 346 U.S. 502, 512, 74 S.Ct. 247, 98 L.Ed. 248 (1954)), and therefore limited to "compelling" circumstances rebutting the "presumption of regularity" that ordinarily "attaches to the criminal case." *Id.* at 72, 78, 760 A.2d 647. Coram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation. As such, coram nobis is an equitable remedy that arises when an individual faces circumstances that did not exist at the guilty plea hearing. *State v. Smith*, 443 Md. 572, 654, 117 A.3d 1093, 1141 (2015). The burden of demonstrating such circumstances is on the coram nobis petitioner. *Id.*, 219 Md. App. 289, 292, 100 A.3d 1204, 1206 (2014)

To state a cause of action for coram nobis relief, a petitioner must allege: (1) grounds that are of a "constitutional, jurisdictional or fundamental character," *id.* at 78, 760 A.2d 647; (2) that

he is "suffering or facing significant collateral consequences from the conviction," *id.* at 79, 760 A.2d 647; (3) that the grounds for challenging the criminal conviction were not waived or finally litigated in a prior proceeding, *id.;* and (4) that he is not, as a result of the underlying conviction, incarcerated or subject to parole or probation such that he would possess another statutory or common law remedy. *Id.* at 80, 760 A.2d 647.Smith v. State, 219 Md. App. 289, 292, 100 A.3d 1204, 1206 (2014)

B. The Petitioner's Claims Are Fundamental and Constitutional in Nature

The grounds for challenging a criminal conviction must be of a constitutional, jurisdictional, or fundamental character. *Skok v. State*, 361 Md. 52, 78, 760 A.2d 647, 661 (2000). A claim that one was convicted on a guilty plea which was not knowingly and intelligently entered is one that asserts the deprivation of a fundamental constitutional right. *McElroy v. State*, 329 Md. 136, 146, 617 A.2d 1068, 1073 (1993). The Supreme Court has also stated that a plea of guilty is more than a confession which admits that the accused did various acts; it is a conviction in itself. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 1711–12, 23 L. Ed. 2d 274 (1969). Additionally, a defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 1171, 22 L. Ed. 2d 418 (1969).

Petitioner claims that after the bench conference had concluded counsel failed to advise him of the concession reached between the court and prosecution, and the court failed to make an inquiry of him before pleading guilty whether he still was willing to plea or proceed with the a new trial; and that his attorney failed to object to the court's conclusions the plea was voluntarily entered, and a factual basis for the plea was sufficient to find beyond a reasonable doubt he

committed first degree murder." Since petitioner alleges that those claims of errors affected the validity or regularity of the judgement that rendered his guilty plea as not having been knowingly, voluntarily, or intelligently made, his claims are fundamental and constitutional in nature.

C. The Petitioner's Claims Were Not Waived

The Court of Appeals has stated that a defendant does not waive his right to pursue *coram nobis* relief by not moving to withdraw his guilty plea when that avenue was available. *State v. Smith*, 443 Md. 572, 576, 117 A.3d 1093, 1096 (2015). Md.Code (2002, 2012 Repl.Vol.), § 8–401 of the Criminal Procedure Article ("CP") states: "The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error *coram nobis.*" *Sanmartin Prado v. State*, 225 Md. App. 201, 206, 123 A.3d 652, 655 (2015), rev'd, 448 Md. 664, 141 A.3d 99 (2016). 'Basic principles of waiver' apply to coram nobis proceedings and 'the same body of law concerning waiver and final litigation of an issue' applies to coram nobis proceedings as applies to the [Uniform Post-Conviction Procedure Act]." *Id.* at 672, 208 A.3d 807. Borrowing from the waiver analysis in post-conviction law, the Court stated:

> The [Uniform Post-Conviction Procedure Act] provides that except where "special circumstances" exist and their existence is proved by a petitioner, "an allegation of error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation ... on direct appeal ...; in a habeas corpus or coram nobis proceeding began by the petitioner; ... or [ ] in any other proceeding that the petitioner began." CP § 7-106(b).

In other words, an allegation is waived if it "had not been raised at trial or in a previously-filed appeal, application for leave to appeal, or post-conviction petition." *Smith*, 443 Md. at 601 [117 A.3d 1093].*Id.* (emphasis added). The Court also noted that, although there is a "rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation" at a prior proceeding, CP § 7-106(b)(2), such a failure is not knowing if it was the "failure of *counsel* or an *unknowing petitioner* to raise an issue," *Smith*, 443 Md. at 603 [117 A.3d 1093], (quoting *Curtis*

v. State, 284 Md. 132, 139, [395 A.2d 464] (1978)) (emphasis added). The "special circumstances" excuse "only becomes pertinent" where the presumption is not rebutted. *Id.* (quoting *Curtis*, 284 Md. at 139 [395 A.2d 464]). *Id.* at 672-73, 208 A.3d 807. Put simply, the Court held that a petitioner waives an issue when he or she could have raised that same issue at a prior proceeding. *Id.* Although there is a rebuttable presumption that a petitioner has intelligently and knowingly waived the issue, the existence of "special circumstances" may still excuse an intelligent and knowing waiver. *Id.* at 672-73, 208 A.3d 807.[15]

The Court further qualified the standards for waiver, explaining that the "intelligent and knowing standard applies only to waiver of 'fundamental constitutional rights," whereas non-fundamental rights are "governed by case law or any pertinent statutes or rules[.]" *Id.* at 673, 208 A.3d 807 (quoting *Smith*, 443 Md. at 605, 117 A.3d 1093).*Griffin v. State*, 242 Md. App. 432, 450–51, 215 A.3d 424, 435 (2019)

The petitioner argues that he was not aware of the discussion during the bench conference, that he did not participate in, that resulted in the prosecutor's concern that if the court grants a new trial, the petitioner would "walk". The petitioner could not have known this at the time of the plea; and therefore, he has not waived his right to challenge the stated allegations of error.

D. The Petitioner Does Not Possess Another Statutory Remedy

A petition for a writ or error *coram nobis* "... provides a remedy for a person who is not incarcerated and not on parole or probation, who is faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional [or fundamental] grounds." *Parker v. State,* 160 Md.App. 672, 677 [866 A.2d 885] (2005) (*citing Skok* at 78 [760 A.2d 647]). State v. Smith, 443 Md. 572, 625, 117 A.3d 1093, 1124 (2015)

The Petitioner is no longer incarcerated and is not on parole or probation, as a result of his conviction in case number 193106007. Therefore, he is not entitled to challenge his guilty plea through a post-conviction petition or writ of habeas corpus which leaves a writ of error coram nobis as his only statutory remedy.

E. Whether the Petitioner is Suffering Collateral Consequences.

As the Court of Special Appeals stated, "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." *Gross v. State,* 186 Md.App. 320, 332, 973 A.2d 895, *cert. denied,* 410 Md. 560, 979 A.2d 708 (2009). The collateral consequences must be actual, not merely theoretical. *See Parker v. State,* 160 Md.App. 672, 687–89, 866 A.2d 885 (2005) (remanding case to circuit court to determine if convictions affected length of subsequent federal sentence). Alternatively, if the State wants to raise the lack of proof of collateral consequences as a defense to a coram nobis petition, however, it must raise this issue in the circuit court. *Graves v. State*, 215 Md. App. 339, 353, 81 A.3d 516, 524 (2013). The state received a copy of the coram nobis petition on November 17, 2023. The State did not file a response.

The petitioner alleges that the wrongful actions of the prosecution's suppression of the dying declaration was exculpatory evidence of Wilson Staples exonerating Mr. Jackson as the person who fatally shot him which ultimately caused Mr. Jackson to be convicted, having to serve 26 years of his life in prison and forced him to litigate his criminal convictions pro-se.

The Appellate Court of Maryland concluded in *Vaughn v. State* that in Maryland, a petitioner must prove five conditions in order to be entitled to *coram nobis* relief. One of those conditions is that the petitioner is suffering or facing significant collateral consequences from the conviction. To prove collateral consequences, petitioner must show that the "collateral

consequences" is one that he or she did not know about at the time the guilty plea was entered. *Vaughn v. State*, 232 Md. App. 421, 430, 158 A.3d 1060, 1065 (2017).

The petitioner alleges that he suffered a collateral consequence by way of having to serve 26 years of his life in prison, as well as, litigating his matters pro-se. In *Fleming v. United States*, 146 F.3d 88 (2d Cir. 1998), the United States Court of Appeals for the Second Circuit was tasked with determining whether Fleming suffered "a continuing legal consequence of his conviction because he [was] 'disabled from employment in a variety of financial jobs.'" *Id.* at 90. Specifically, Fleming alleged that his criminal conviction prohibited him from obtaining a license as a securities broker. *Id.* In rejecting Fleming's argument, the Second Circuit provided two examples of "continuing legal consequences": "*where a prior conviction deprives a petitioner of his right to vote under state law* or *serves as an 'aggravating factor' in sentencing for a subsequent offense[.]*" *Id.* (citations omitted). Contrasting these examples of continuing legal consequences, the court stated that "the mere 'desire to be rid of the stigma' of a conviction is not enough." *Id.* *Griffin v. State*, 242 Md. App. 432, 440–41, 215 A.3d 424, 429–30 (2019).

The Supreme Court has expressly recognized that it is an "obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences." *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968). In fact, "[a]lthough the term [of imprisonment] has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, [and] civil rights may be affected." *United States v. Morgan*, 346 U.S. 502, 512–13, 74 S.Ct. 247, 98 L.Ed. 248 (1954) (emphasis added). *Parker v. State*, 160 Md. App. 672, 687, 866 A.2d 885, 893–94 (2005).

However, the petitioner does not allege or prove that he did not know about the consequences of serving jail time when he pled guilty before the Honorable Charles Peters. As to litigating pro-se, the petitioner fails to explain what efforts were made, if any, as to representation. A coram nobis is a civil action and thus has no right to counsel appointed by the State or the court. *Sinclair v. State*, 199 Md. App. 130, 136, 20 A.3d 192, 195 (2011).

Procedurally, this matter came before the Judge Peters on a petition for actual innocence, and the petitioner was well aware of the potential of serving a sentence, in fact, he was serving a sentence. The petitioner points to counsel's failure to interview key individuals in correlation with the newly discovered evidence that would have likely changed the result of his trial. The Court recognizes in *Graves v. State* noted that under Maryland Rule 4-242, "petitioner convicted on a negotiated guilty plea was not suffering or facing significant collateral consequence that was unexpected at time he entered the plea, namely that he would serve a sentence, as required to obtain coram nobis relief, where petitioner was informed at time, he entered plea of the maximum penalty for the offense and the sentence that would be imposed." On November 23, 2015, the petitioner was informed by the court that he was pleading guilty to first-degree murder and the court would impose a sentence of life suspend all but 30 years, followed by five years supervised probation, and the court would date the 30 years from March 8, 1993. [1]

Petitioner argues that he should not have been made to go through the events of his actual innocence proceedings to only have it remanded back to Judge Peters. Whereas this court understands the hardship of serving a sentence and the loss of one's liberty, it must be noted that the posture of the case before this court is a petition for *coram nobis* based on petitioner's guilty plea, not the prior offense by which the petition for actual innocence was based. Therefore, this

[1] Transcript, November 23, 2015, page 12

court's analysis is based solely on the guilty plea taken before the Honorable Charles Peters, after granting petitioner's petition for actual innocence. In as such, the court is looking at the collateral consequences that the petitioner faced by pleading guilty, not the collateral consequences that the petitioner faced based on the original sentence. As a result, the court finds that the defendant has not asserted that he is suffering collateral consequences as to the guilty plea; but instead argues that his plea was not knowingly and voluntarily entered. As such, *coram nobis* is an equitable remedy that arises when an individual faces circumstances that did not exist at the guilty plea hearing. *State v. Smith*, 443 Md. 572, 654, 117 A.3d 1093, 1141 (2015).

The court finds that the petitioner has not met the burden of demonstrating that he is "suffering or facing significant collateral consequences from the conviction." The petitioner does not provide a consequence of his conviction pursuant to the guilty plea and as a result, the court finds that the petitioner has failed to state a cause of action for *coram nobis* relief, by failing to state a collateral consequence(s) as a result of his guilty plea. For those reasons, the petition for coram nobis relief is denied.

However, the court feels compelled to address the allegations in petitioner's petition. A coram nobis proceeding's purpose is not to determine, based on the record, whether the trial court erred at the time of a guilty plea, but instead to determine whether a petitioner indeed knowingly and voluntarily pled guilty. *State v. Rich* at 464. Unlike the writ of habeas corpus, which can be used to relieve petitioners from incarceration imposed as a sentence for a crime, the writ of error coram nobis exists to relieve petitioners of collateral consequences suffered after the completion of their sentences. *Skok*, 361 Md. at 80, 760 A.2d 647; *Reyes v. State*, 253 Md. App. 476, 494, 268 A.3d 919, 930 (2022).

The COURT: All right. And is that correct, counsel?

Ms. Cawood: Yes, Your Honor....

The COURT: All right, sir. Has your attorney done everything that you've requested and are you satisfied with your attorney's representation?

Mr. Jackson: Yes.

The COURT: All right. Has anyone made any promises to you other than the plea bargain that caused you to plead guilty here today?

Mr. Jackson: No.

The COURT: All right. Have you been forced or threatened by anyone to plead guilty here today?

Mr. Jackson: No.

The COURT: All right. So, you are pleading guilty freely and voluntarily, sir?

Mr. Jackson: Yes.

The COURT: All right. Sir, do you have any questions for me or your attorney?

Mr. Jackson: No. [2]

Based on the record, the petitioner was aware of the nature of the charges and provides no basis for the court to conclude that his plea was not voluntary and knowing. The petitioner also stated on the record that he indeed knowingly and voluntarily pled guilty. Petitioner argues that the trial judge failed to inquire whether the petitioner was pleading guilty because he was in fact guilty. A trial court "does not have to 'specifically enumerate certain rights, or go through any particular litany, before accepting a defendant's guilty plea.' " *State v. Gutierrez,* 153 Md.App. 462, 476, 837 A.2d 238 (2003) (quoting *Davis v. State,* 278 Md. 103, 114, 361 A.2d 113 (1976)); *see also Miller v. State,* 32 Md.App. 482, 485, 361 A.2d 152 (1976) (it is not necessary for the

[2] Transcript, 11.15.2022 at 15-22.

Maryland Rule 4-242 states that the court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

When an appellant on direct appeal claims that a guilty plea was not knowingly and voluntarily entered "with an understanding of the nature of the charge(s) and the consequences of the plea," as required by Maryland Rule 4–242(c), courts look at the "totality of the circumstances" as reflected on 'the record as a whole' that was before the trial judge" during the plea proceeding. *State v. Daughtry,* 419 Md. 35, 80 n. 31, 18 A.3d 60 (2011) (quoting *State v. Priet,* 289 Md. 267, 291, 424 A.2d 349 (1981)). In other words, evidence extrinsic to the plea proceeding itself is not considered. *Id.* (citing *Cuffley v. State,* 416 Md. 568, 582, 7 A.3d 557 (2010). The Appeals courts stated ("when determining the terms of a binding plea agreement, we look "*solely* to the record established at the Rule 4–243 plea proceeding" and "extrinsic evidence of what the defendant's actual understanding might have been is irrelevant to the inquiry"). In the present case, the petitioner was advised as follows:

> The COURT: All right. Now do you understand the nature and elements of this charge and the maximum penalties for this charge to which you are pleading guilty, and did you not discuss the nature and elements of this charge and the penalties for this charge with your attorney?
>
> Mr. Jackson: Yes.

court to engage in a "ritualistic litany" of specific rights that a defendant waives by pleading guilty). *Miller v. State*, 185 Md. App. 293, 301, 970 A.2d 332, 337 (2009).

As stated in *Skok v. State*, "the writ [of error coram nobis] will lie to set aside a judgment obtained by fraud, coercion, or duress, *or where a plea of guilty was procured by force, violence, or intimidation,* or where at the time of the trial the defendant was insane, when such facts were not known to the trial court when the judgment was entered, or where the accused was prevented by fraud, force, or fear from presenting defensive facts which could have been used at his trial, when such facts were not known to the court when the judgment was entered. The writ will not lie to correct an issue of fact which has been adjudicated even though wrongly determined; nor for alleged false testimony at the trial; nor for newly discovered evidence." (Emphasis added). *Skok v. State*, 361 Md. 52, 69, 760 A.2d 647, 656 (2000).

The petitioner claims ineffective assistance of counsel in 1) failing to interview the police and medics in preparation for actual innocence hearing that exonerated Mr. Jackson as the shooter, 2) failing to advise Mr. Jackson of his constitutional right to be present and unfairly barring his participation in a bench conference during critical stages of the plea bargaining proceedings, 3) failing to inquire as to whether he still wanted to plead guilty, and 4) failure to object to the court's conclusion that the guilty plea was voluntarily entered. The record transcript as well as the petitioner's claims of error do not persuade the Court that the plea that led to the judgment was obtained by fraud, coercion, or duress, or alternatively, was entered into involuntarily.

ALLEGATIONS

ALLEGATION ONE

Petitioner argues that counsel provided ineffective assistance in counsel's preparation for the actual innocence hearing failure to interview the police officer and medics as well as to issue subpoena to have them testify during the hearing relative to the dying declaration of Wilson Staples exonerating Mr. Jackson.

The prosecutor in this case conceded and the court found that there was newly discovered evidence and that this evidence would provide a substantial or significant possibility that the verdict would have been affected had this evidence been known at the time of the trial. As a result, the petition was granted a new trial. There is no need to address this allegation in light of the State's consent and the granting of a new trial by the court. Whether there was a need, by counsel, to interview the police officer and medic in relation to the dying declaration was made moot, by the petitioner's decision to plead guilty.

ALLEGATIONS TWO, THREE, FOUR

Petitioner argues that counsel provided ineffective assistance in failing to advise Mr. Jackson of his constitutional right to be present and failure to object to the court unfairly barring his present and participation in a bench conference involving a critical stage of the plea-bargaining proceedings. (Petitioner combined allegations two and three)

Counsel provided ineffective assistance during the plea-bargaining negotiations proceedings after the bench conference had concluded in failing before Mr. Jackson enter a guilty plea to advise him of the bench concession reach between the court and prosecution and inquiry of him whether he still was willing to plea guilty or proceed with the petition's merits for a new trial and insisted on going to trial.

The court recognizes that a criminal defendant does not have the right to be present at every bench or chambers conference that may be conducted during the course of the trial. There are occasions when such conferences constitute not a stage of the trial but rather a suspension of the trial while the court takes up collateral matters or questions of law which must be resolved before

the case can continue. See, e. g., Brown v. State, 272 Md. 450, 325 A.2d 557 (1974) (chambers and bench conferences concerning the admissibility of evidence and the violation of a sequestration order held not material stages of the trial); Veney v. Warden, 259 Md. 437, 271 A.2d 133 (1970) (discussion in chambers of proposed procedures concerning sequestration of the jury); Martin v. State, 228 Md. 311, 179 A.2d 865 (1962) (chambers hearing on motion for judgment of acquittal); Brown v. State, 225 Md. 349, 170 A.2d 300 (1961), Cert. denied, 372 U.S. 960, 83 S.Ct. 1017, 10 L.Ed.2d 13 (1963) (proposed jury instructions and arguments relating thereto considered by judge and counsel in chambers); Sewell v. State, 34 Md.App. 691, 368 A.2d 1111 (1977) (conference concerning disclosure of informant); State v. Tumminello, 16 Md.App. 421, 298 A.2d 202 (1972) (conferences on the admissibility of evidence). *Haley v. State*, 40 Md. App. 349, 353–54, 392 A.2d 551, 554 (1978).

Petitioner argues that the concern of the prosecutor that *if you grant him a new trial then he's walking* was not told to him by his counsel. The court was advised that they wish the court to bind itself to a proposed agreement. [3]The following took place at the bench conference:

STATE: My **concern** is that if we were ordered for a new trial, securing a conviction 23, 24 years later, would be a gamble. [4]

COURT: …So basically your **concern** was fine. If they're going to get in the and I guess if it was proven to be a dying declaration that this guy said somebody else, did it, I think under the fact you're going to meet your burden, that's probably—I think that would be something that would have a substantial possibility to effect the verdict. Okay, all right. So that's what you're conceding then, right?

STATE: Right…. And my **concern** more likely than not, if is this court finds that –

COURT: Right. If I give you a new trial, then he's walking. Sure.

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[3] Transcript, November 23, 2015, page 7

[4] Transcript, November 23, 2015, page 8

STATE: And I just want to be clear, the mother, 10 days ago, was absolutely mortified by this **possibility.**

DEFENSE: And Mr. Jackson wanted to proceed, originally want to proceed, with the petition too. But then I think common sense (inaudible) I want to go home and see my grandchildren. That was basically it.[5]

The petitioner took the statement "will walk" as words that equated to exoneration, when in fact, the petitioner did not consider the circumstances surrounding and the context by which the statements were made. The attorneys approached the bench for a bench conference regarding the plea agreement between the State and the defense. The court nor counsel made no error based on this statement, nor prejudiced the defendant in anyway by conducting the bench conference without the defendant's presence. The attorneys approached the bench, only after they informed the judge that they reached an agreement in this case. The State and the defense at this juncture of the proceeding was explaining the plea agreement and the reasons for the agreement pursuant to Maryland Rule 4-243 (c):

> **(c) Agreements of Sentence, Disposition, or Other Judicial Action.**
> (1) *Presentation to the Court.* If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement, or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.
> (2) *Not Binding on the Court.* The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.
> (3) *Approval of Plea Agreement.* If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

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[5] Transcript, November 23, 2015, page

The Rule does not require that chambers and bench conferences dealing with the plea agreement be on the record. Rule 4–243(d) provides as follows:

> All proceedings pursuant to this Rule, including the defendant's pleadings, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.

Most assuredly, the policy underlying all of Rule 4–243 is to promote fair play and equity. *See Brockman,* 277 Md. at 697, 357 A.2d 376. Subsection (d) plays an obvious role in guaranteeing that result by memorializing that to which each party has agreed. *State v. Poole*, 321 Md. 482, 498, 583 A.2d 265, 273 (1991). In *Poole*, the State, and the defense, without the defendant, went to the judge's chambers for a chambers conference; which was not recorded; unlike the present case, where the bench conference was recorded. When the parties intend to proceed under subsection (c)(1) of the Rule. Accordingly, subsection (d) requires recordation of that proceeding at which both counsel advised the court of the terms of the agreement and the defendant entered his plea. Subsection (c)(1) also required the trial judge to inform the defendant whether he intended to accept or reject the plea and the agreement. *Id.* The Supreme Court of Maryland stated that chambers and bench conferences are an indispensable part of judicial proceedings, and, more often than not, serve to keep counsel and the court from making errors or from wasting judicial time. The Court encouraged trial judges to make a record of pertinent discussion and decisions reached. *Id a 499.*

The petitioner, in open court, was advised that the evidence of the dying declaration, would provide a substantial or significant possibility that the verdict would have been affected had this evidence been known at the time of the trial and it is not a strength to one's reasoning to understand the prosecutors concern in the court granting a new trial but conceded that the evidence in fact

would have affected the verdict as they discussed the agreement with the court. The petitioner wants this court to believe that the statement made by the prosecutor was a statement that he would be exonerated, and the court is not willing to make that leap. Plea agreements eliminate many of the risks, uncertainties, and practical burdens of trials. *Santobello v. New York*, 404 U.S. 257, 261, 92 S. Ct. 495, 498, 30 L. Ed. 2d 427 (1971). Even a mis assessment of the strength of the State's case, even if defense counsel is responsible for the mis assessment, will not invalidate a guilty plea. All the pertinent facts normally cannot be known unless witnesses are examined and cross-examined in court. Even then the truth will often be in dispute. In the face of unavoidable uncertainty, *the defendant and his counsel must make their best judgment as to the weight of the State's case.... Waiving trial entails the inherent risk that the good faith evaluations of a reasonably competent attorney will turn out to be mistaken* either as to the facts or as to what a court's judgment might be on given facts. 397 U.S. at 769–70, 90 S.Ct. 1441 (emphasis supplied).

In *Brady v. United States*, 397 U.S. 742, 749, 90 S. Ct. 1463, 1469, 25 L. Ed. 2d 747 (1970), the Supreme Court made clear that much guesswork is involved in judging the strength of the State's case and in predicting likely punishment. Ill-advised guesses, however, do not invalidate otherwise voluntary and knowing pleas of guilty. Often the decision to pled guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; *judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time.* The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because

he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case, or the likely penalties attached to alternative courses of action. Id. at 756–57.

Even if the defendant was unaware of this statement, the prosecutor discussed with the judge the State's reasons for entering into the plea agreement. In regard to whether the petitioner knew about the statement concerning the petitioner "*walking* if a new trial was granted;" the petitioner did know. In fact, on the record, the court granted the new trial; stating to the petitioner, in open court, that the weight of the newly discovered evidence was such that it would have affected the verdict. A petitioner asserting newly discovered evidence must satisfy three requirements to prevail in a petition for actual innocence. A petitioner must produce newly discovered evidence that: (1) "speaks to" the petitioner's actual innocence; (2) "could not have been discovered in time to move for a new trial under Md. Rule 4–331"; and (3) creates "a substantial or significant possibility that the result may have been different." *Smith v. State*, 233 Md. App. 372, 411, 165 A.3d 561, 584 (2017). The court found that instead of being found guilty that there is a substantial possibility that the result may have been different. The trial judge made the finding that the petitioner met his burden; yet the petitioner opted to plead guilty. The petitioner fails to recognize that he was informed that the weight of the newly discovered evidence may have created the possibility that he would not have been found guilty and the prosecutors concern that the petitioner may walk if he is granted a new trial is exactly what occurred, and he was informed. Because of the unique nature of the guilty plea, even grave matters of fundamental or constitutional dimension are beyond the pale of post-conviction consideration. *Yonga* at 77.

The petitioner, at that time, could have proceeded with the new trial and allow the evidence regarding the dying declaration to be put before the court or a jury. However, the defendant made the decision to pled guilty.

A post-conviction petitioner of any sort must successfully challenge his guilty plea before he is free to raise other issues which the unchallenged guilty plea may have waived. One does not, moreover, challenge a guilty plea merely by implication. Pleading remains a legal requirement. The court finds that the petitioner was put on notice when the trial court found that there was "a substantial or significant possibility that the result may have been different."

A guilty plea is in a world of its own as a short-cut procedural modality for producing a criminal conviction, frequently as a result of plea bargaining. Post-conviction review of a guilty plea is similarly in a world of its own. It is concerned not with the admissibility or the sufficiency of the evidence or with the satisfaction of the Bill of Rights. Its very different concerns are voluntariness, knowledgeability, and the supporting statement of facts. It is a formal and binding acknowledgment of guilt. *Id.*

Our core understanding of a guilty plea is found in the Supreme Court decision of *Boykin v. Alabama,* 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The Supreme Court was emphatic about what an accepted plea of guilty represents.

> *A plea of guilty* is more than a confession which admits that the accused did various acts; it *is itself a conviction;* nothing remains but to give judgment and determine punishment.

395 U.S. at 242, 89 S.Ct. 1709 (emphasis supplied).

The Supreme Court went on, *id.* at n. 4, to point out that the quantity and quality of the evidence, original or newly discovered, is not an issue.

> A plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that *no proof by the prosecution need be advanced. It supplies both evidence and verdict,* ending controversy.

Yonga v. State, 221 Md. App. 45, 71–72, 108 A.3d 448, 463–64 (2015), aff'd, 446 Md. 183, 130 A.3d 486 (2016). Several constitutional rights are waived when a plea of guilty is entered.

Among them are 1) the privilege against compelled self-incrimination; 2) the right to trial by jury; and 3) the right to confront one's accusers. 395 U.S. at 243, 89 S.Ct. 1709. In emphasizing the protections that should be safeguarded by the trial judge in taking a guilty plea, the Supreme Court clearly implied that if those protections are, indeed, afforded, a conviction based on a guilty plea should thereby be "insulated from attack."

> *If these convictions are to be insulated from attack,* the trial court is best advised to conduct an on the record examination of the defendant which should include, *inter alia,* an attempt to satisfy itself that the defendant understands the nature of the charges, his right to a jury trial, the acts sufficient to constitute the offense for which he is charged and the permissible range of sentences.

395 U.S. at 244 n. 7, 89 S.Ct. 1709 (emphasis supplied; citations omitted).

ALLEGATION FIVE

> **Counsel provided ineffective assistance in failing to object to the court's fraudulence conclusion Mr. Jackson guilty plea was voluntarily and the factual basis for the plea were sufficient to find beyond a reasonable doubt he committed first degree murder**

Guilty pleas in Maryland courts are governed by Maryland Rule 4-242 (c)

> **(c) Plea of Guilty.** The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

Before a guilty plea may be finally accepted, Rule 4-242(c)(2) requires the court to determine that "there is a factual basis for the plea." *See also State v. Thornton*, 73 Md. App. 247, 252, 533 A.2d 951 (1987). That does not mean that the State must prove its case before the court

may accept a guilty plea, or that a guilty plea hearing is akin to a trial on a stipulated set of facts. Rather, the factual basis inquiry confirms that the plea is "truly voluntary," thus safeguarding against the possibility that a defendant "plead[s] ... without realizing that his conduct does not actually fall within the charge" and "facilitat[ing] [the judge's] determination of a guilty plea's voluntariness ... in any subsequent post-conviction proceeding." *Thornton*, 73 Md. App. at 254-55, 533 A.2d 951 (quoting *McCarthy v. United States*, 394 U.S. 459, 467, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)). Accordingly, "[t]he factual basis requirement is inextricably linked to the voluntariness requirement." *Thornton*, 73 Md. App. at 255, 533 A.2d 951; *see Metheny*, 359 Md. at 600, 755 A.2d 1088 ("[T]he factual basis requirement ... is closely associated with the due process mandate that a defendant enter a guilty plea voluntarily."). "A trial court has broad discretion as to the sources from which it may obtain the factual basis for the plea." *Metheny*, 359 Md. at 603, 755 A.2d 1088. One "generally accepted method [ ] of establishing a factual basis for a guilty plea" is the "prosecutor's testimony," which takes the form "of a summary of the evidence [the prosecutor] expects to present at trial." *Thornton*, 73 Md. App. at 257-58, 533 A.2d 951 (quoting John L. Barkai, *Accuracy Inquiry for All Felony and Misdemeanor Pleas*, 126 U. Pa. L. Rev. 88, 121-22 (1977)). The prosecutor must "supply concrete facts rather than merely assert that a factual basis exists," and "the truth of the evidence thus summarized [must] be confirmed by the defendant." *Thornton*, 73 Md. App. at 258, 533 A.2d 951 (quoting Barkai, *supra*, at 122). So long as "the conduct which the defendant admits constitutes the offense charged to which he has pleaded guilty," though, the court may rely on the summary confirmed by the defendant to find that a sufficient factual basis supports the guilty plea. *Thornton*, 73 Md. App. at 255, 533 A.2d 951 (quoting *McCall v. State*, 9 Md. App. 191, 199, 263 A.2d 19 (1970)). In other words, "when facts are admitted by the defendant and are not in dispute, the judge need only apply the facts to the

legal elements of the crime charged to determine if an adequate factual basis exists." *Metheny*, 359 Md. at 603, 755 A.2d 1088; *State v. Smith*, 244 Md. App. 354, 374–76, 223 A.3d 1079, 1090–91 (2020). The court finds no error in the factual basis provided by the prosecutor or the court's finding that a factual basis existed.

As the Supreme Court of the United States noted in *Santobello v. New York*, 404 U.S. 257, 261, 92 S. Ct. 495, 498, 30 L. Ed. 2d 427 (1971) states that the termination of charges after plea negotiations leads to [the] prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pre-trial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. Additionally, plea agreements eliminate many of the risks, uncertainties, and practical burdens of trial, permit the judiciary and prosecution to concentrate their resources on those cases in which they are most needed, and further law enforcement by permitting the State to exchange leniency for information and assistance. All in all, it is our view that plea bargains, when properly utilized, aid the administration of justice and, within reason, should be encouraged.

The petitioner argues that the trial judge should have expressly affirmed the facts that the prosecution presented were true or that he was aware of what he characterizes as a concession made at the bench. The bench conference was a discussion of the guilty plea that counsel had advised the court had been reached between the parties. In addition, a trial court "does not have to 'specifically enumerate certain rights, or go through any particular litany, before accepting a defendant's guilty plea.' " *State v. Gutierrez*, 153 Md.App. 462, 476, 837 A.2d 238 (2003) (quoting

Davis v. State, 278 Md. 103, 114, 361 A.2d 113 (1976)); *see also Miller v. State,* 32 Md.App. 482, 485, 361 A.2d 152 (1976) (it is not necessary for the court to engage in a "ritualistic litany" of specific rights that a defendant waives by pleading guilty). *Miller v. State*, 185 Md. App. 293, 301, 970 A.2d 332, 337 (2009). The following was explained to the petitioner:

> COURT: ...if the case had gone to trial, you would have had the right to demand the State produce its witnesses against you. They would have come into Court; they would have to testify under oath... now the only evidence that I'm going to hear is just going to be a statement of facts read into the record by the prosecutor to show me there's a factual basis for your plea. So, do you understand by pleading guilty you give up the right to confront and cross examine the State's witnesses?
>
> PETITIONER: Yes

The court finds no merit to this allegation.

HEARING

A petition for writ of error coram nobis does not automatically trigger a hearing. *Moguel v. State*, 2009, 966 A.2d 963, 184 Md.App. 465. Maryland Rule 15-1206(a) sets forth that it is within the *coram nobis* court's discretion to hold a hearing on the petition for writ of error *coram nobis*.

> **(a) Generally.** The court, in its discretion, may hold a hearing on the petition. The court may deny the petition without a hearing but may grant the petition only if a hearing is held. The court may permit evidence to be presented by affidavit, deposition, oral testimony, or any other manner that the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the Rules in Title 5, except those relating to competency of witnesses. *Smith v. State*, 2014, 100 A.3d 1204, 219 Md.App. 289.

This Court's precedent regarding the extraordinary nature of a writ of error *coram nobis* in connection with the governing Maryland Rules, clearly establishes that the *Skok* qualifications are threshold requirements that a petitioner must satisfy, but satisfaction of these qualifications does not result in an automatic grant of a petition for writ of error *coram nobis*. If these qualifications

are not sufficiently established in the petition for writ of error *coram nobis*, the *coram nobis* court is permitted to deny the petition without conducting a hearing on the matter. *See* Md. Rule 15-1206(a). Notably, even where the *Skok* qualifications are established in the petition for writ of error *coram nobis*, the *coram nobis* court still has the discretion to deny the petition without a hearing if the petition does not present the *coram nobis* court with circumstances compelling such action to achieve justice. *Id.* Accordingly, a petition for writ of error *coram nobis* shall only be granted where the *coram nobis* court conducts a hearing pursuant to Maryland Rule 15-1206(a), determines that the *Skok* qualifications are satisfied, and settles that the matter presents circumstances compelling such action to achieve justice consistent with this Court's precedent. Determining whether the matter involves circumstances compelling such action to achieve justice is not a threshold requirement such as the qualifications enumerated in *Skok*. Instead, this is a discretionary determination left with the *coram nobis* court to ensure that this extraordinary remedy is reserved for only the most egregious and deserving of situations. *Smith v. State*, 480 Md. 534, 548–49, 281 A.3d 154, 163 (2022).

WHEREFORE, the Petition for Writ of Error Coram Nobis is **DENIED**.