

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1158

September Term, 2012

SHEA HAYES

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C. J.

Filed: February 9, 2015

Convicted of first-degree murder and the use of a handgun in the commission of a crime of violence, Shea Hayes appeals the denial of his petition for writ of actual innocence and of his motion to reopen his post-conviction proceeding by the Circuit Court for Wicomico County. Although we conclude that Hayes's appeal from the denial of his motion to reopen is not properly before us, because he never filed an application for leave to appeal, we find that, in denying his petition for writ of actual innocence, the circuit court applied the wrong legal test and we shall vacate the judgment and remand this matter of the court's decision.

BACKGROUND

On October 10, 1995, Hayes shot and killed Raymond James in the parking lot of an apartment complex. A jury subsequently convicted Hayes of first-degree murder and use of a handgun in the commission of a crime of violence, and he was sentenced to a term of life imprisonment plus fifteen years. Ultimately, his convictions were affirmed by this Court on appeal. *Shea Douglas Hayes v. State of Maryland*, No. 1849, Sept. Tern, 1996 (filed Sept. 4, 1996).

At trial, Hayes contended that he had shot James in self-defense, but Laron Waters, an eleven-year-old witness, testified that Hayes and the victim had argued before the shooting and that Hayes had retrieved a handgun and confronted the victim armed with that gun. This testimony was used by the State, at trial, to rebut Hayes's contention that he had acted out of self-defense and had only shot the victim after the victim had approached him in a threatening manner.

Between 1998 and 2005, Hayes petitioned for post-conviction relief on various grounds, including one petition for post-conviction relief and three motions to reopen his post-conviction case. All of these petitions were denied by the circuit court. He also filed four applications for leave to appeal from the circuit court's denials of his various petitions for post-conviction relief, but these applications were also denied.

On August 17, 2011, Hayes submitted a hybrid filing entitled "Petition for Writ of Actual Innocence & Motion to Reopen a Closed Post Conviction Proceeding & Request for Hearing & Supporting Memorandum of Law." This filing raised two separate claims: one consisting of a petition for writ of actual innocence filed pursuant to Md. Code (2002, 2008 Repl. Vol., 2010 Supp.), § 8-301 of the Criminal Procedure Article ("CP") and the other a motion to reopen his post-conviction proceeding pursuant to CP § 7-101 *et seq.* Hayes also requested a hearing on the merits of the two claims he raised in the filing.

In his petition for writ of actual innocence, Hayes alleged that Waters perjured himself at trial by submitting false testimony regarding Hayes's interactions with the victim before he retrieved the handgun. In support of that allegation, Hayes submitted transcripts of Waters's testimony at trial, references to Waters's testimony in the State's opening and closing arguments, and a 2009 affidavit signed by Waters attesting to the false nature of the testimony he gave at trial. Hayes further asserted that the newly discovered evidence of Waters recanting his trial testimony created a "substantial probability" that he would not have been convicted of first-degree murder.

In his motion to reopen his post-conviction proceeding, Hayes claimed that his rights to due process were violated when the State failed to disclose Waters's perjured testimony, which he characterized as "exculpatory information" critical to his assertion that he had acted out of self-defense in shooting the victim. That failing, according to Hayes, amounted to prosecutorial misconduct and thus his post-conviction proceeding should be reopened.

After a hearing on Hayes's filing, the circuit court denied the petition for writ of actual innocence and motion to reopen the post-conviction proceeding in an opinion issued on July 11, 2012. Hayes noted an appeal from the court's denial of his petition for writ of actual innocence, but he never filed an application for leave to appeal the court's denial of his request to reopen the post-conviction proceeding.

DISCUSSION

Hayes claims, *first*, that the circuit court erred in denying his motion to reopen his post-conviction proceeding and, *second*, that the circuit court erred by applying an incorrect legal standard in evaluating the effect of his newly discovered evidence on the trial verdict.

I.

The Uniform Postconviction Procedure Act, CP § 7-101 *et seq.*, established a mechanism by which a defendant may move to reopen his or her post-conviction proceeding. Pursuant to CP § 7-104, "[t]he court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice." *Id.* If the movant disagrees with the court's disposition of his or her motion to reopen, the

movant may, within thirty days, file an application for leave to appeal to the Court of Special Appeals. CP § 7-109.

An application for leave to appeal is a pathway to appellate review which is quite separate and distinct from a notice of appeal. Unlike a notice of appeal, such an application must contain “a concise statement of the reasons why the judgment should be reversed or modified and [must] specify the errors allegedly committed by the lower court.” Md. Rule 8-204(b). A notice of appeal, on the other hand, need only state the caption of the case and the appealing party’s name, and include that party’s signature, a certificate of service, and a brief statement that the appealing party “notes an appeal to the Court of Special Appeals in the above-captioned action.” Md. Rules Appendix of Forms, Form 22; Md. Rule 8-201.

Hayes never filed an application for leave to appeal from the decision of the circuit court to deny his motion to reopen his closed post-conviction proceeding. Instead, he filed a notice of appeal to the court’s order “denying Petitioner’s Petition for a Writ of Actual Innocence” and thereby failed to meet the thirty-day deadline required by CP § 7-109(a).

We have discretion in determining whether to require strict compliance with the rules governing applications for to leave appeal. *Grandison v. State*, 425 Md. 34, 52 (2012). While we have treated, on occasion, an application for leave to appeal as a notice of appeal, because it contains what a notice must have and much more, we have consistently declined to do so when a notice of appeal is filed instead of the required application, as such a notice does not contain the vital information required to be in by an application. Because Hayes’s

notice of appeal did not include the requisite “concise statement of the reasons why the judgment should be reversed or modified” or “specify the errors allegedly committed by the lower court,” as required by Rule 8-204(b)(3), we cannot treat it as an application for leave to appeal from the denial of his motion to reopen his post-conviction proceeding and must dismiss his appeal.

II.

Appellant contends that the circuit court, in denying his petition for writ of actual innocence, applied the wrong legal standard in determining whether the newly discovered evidence would have altered the outcome of the trial. Specifically, appellant asserts that the court improperly used a standard requiring him to establish a *probability* that the newly discovered evidence would have altered the outcome of his trial.

The circuit court has discretion in deciding whether to grant or deny a petition for writ of actual innocence. Nonetheless, “‘an exercise of discretion based upon an error of law is an abuse of [that] discretion’ and usually requires reversal.” *State v. Seward*, 220 Md. App. 1, 25 (2014) (alteration in original) (quoting *Bass v. State*, 206 Md. App. 1, 11, (2012)).

After first resolving the questions of whether the evidence proffered by Hayes in his petition was indeed newly discovered and material, the circuit court turned to the question of whether the evidence would have produced a different trial outcome. To answer this question, the court invoked the “probable” rule described in *Stevenson v. State*, 299 Md. 297 (1984), and rejected Hayes’s claims of newly discovered evidence because there was

sufficient evidence of guilt to demonstrate that his claims, even if true, were not likely to alter the verdict.

In *Yorke v. State*, 315 Md. 578 (1989), decided five years after *Stevenson*, the Court of Appeals reconciled the tension between the “might” and “probable” rules by promulgating an intermediate standard regarding the speculative effect of new evidence on a verdict. *Id.* at 588. Under the *Yorke* standard, the circuit court is to gauge whether:

The newly discovered evidence may well have produced a different result, that is, [whether] there was a substantial or significant possibility that the verdict of the trier of fact would have been affected.

Id. The *Yorke* standard falls between the more stringent “probable” and less stringent “might” rules and also replaced these earlier standards when courts evaluate claims of newly discovered evidence. *Id.*

The passage of CP § 8-301 created petitions for writ of actual innocence and memorialized the “substantial or significant possibility” language of *Yorke* within the statutory text. Under CP § 8-301(a)(1), a petitioner’s claim of “newly discovered evidence” must “create[] a substantial or significant possibility that the result may have been different, as that standard has been judicially determined.” *Id.* Caselaw interpreting the statute has made clear that this test is the proper lens through which to evaluate a claim of newly discovered evidence raised in a petition for writ of actual innocence. *See Douglas v. State*, 423 Md. 156, 179-80 (2011); *see also Jackson v. State*, 216 Md. App. 347, 371 (2014); *Keyes v. State*, 215 Md. App. 660, 668 (2014).

In the instant case, the circuit court abused its discretion by not applying the proper standard in evaluating the effect of the newly discovered evidence on the verdict in Hayes's trial. Upon remand, the court must, in accordance with CP § 8-301(a)(1), evaluate whether the newly discovered evidence claimed by Mr. Hayes "creates a substantial or significant possibility that the result [of the trial] may have been different."

**ORDER OF THE CIRCUIT COURT FOR
WICOMICO COUNTY VACATED AND
REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**