

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 1418

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

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**Criminal Procedure - Coram Nobis - Failure to Seek Appeal**

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This bill establishes that 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 a writ of error *coram nobis*.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be handled with existing State resources.

**Local Effect:** The bill's requirements can be handled with existing local resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** Under the English common law, a writ of error *coram nobis* was a remedy allowing a court to correct an error in fact. The writ was used "...to bring before the court facts which were not brought into issue at the trial of the case, and which were material to the validity and regularity of the proceedings, and which if known by the court, would have prevented the judgment." *Skok v. State*, 361 Md. 52, 68 (2000) (quoting *Madison v. State*, 205 Md. 425, 432 (1954)). In *Skok v. State*, the Court of Appeals extended the writ of error *coram nobis* to apply to errors in law. See *Skok* at 78.

A petition for a writ of 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 grounds." *Parker v. State*, 160 Md. 672, 677 (2005) (citing *Skok* at 78). The petitioner bears the burden of proof "...to show that the grounds for challenging the

criminal conviction are of a constitutional, jurisdictional, or fundamental character; that the petitioner is suffering or facing significant collateral consequences from the conviction; and that there is no other statutory or common law remedy available.” See Parker at 678 (*citing Skok* at 78-80).

In *Holmes v. State*, 401 Md. 429 (2007), the Court of Appeals held that there is a rebuttable presumption an individual waives his/her right to file a petition for a writ of error *coram nobis* if he/she enters a guilty plea and does not file an application for leave to appeal despite having been informed of his/her right to file the application, unless the individual can demonstrate that there are special circumstances to excuse his/her failure to file the application for leave to appeal.

Under Maryland Rule 15-1202, an action for a writ of error *coram nobis* is commenced by the filing of a petition in the court where the conviction took place.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State’s Attorneys’ Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 20, 2012  
mc/kdm

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