Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 810 (Senators Smith and Ramirez)
Judicial Proceedings

Criminal Procedure - Coram Nobis - Time for Filing

This bill establishes that unless good cause is shown, a petition for writ of error *coram nobis* may not be filed more than three years after the petitioner knew or should have known that the petitioner faces a significant collateral consequence from the conviction that is the basis for the conviction.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect State finances.

Local Effect: The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: 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).

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. Pursuant to Chapter 437 of 2012, 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*. Chapter 437 was a response to the Maryland Court of Appeals' decision in *Holmes v. State*, 401 Md. 429 (2007), in which the court held that there is a rebuttable presumption that 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.

Background: *Laches* is an equitable doctrine through which a court may deny relief to a claimant who has unreasonably delayed asserting his/her rights or claim and that unreasonable delay has prejudiced the opposing party. With respect to petition for writ of error *coram nobis*, Maryland courts have determined that "[t]he passage of time alone does not render an action barred by *laches*." *Moguel v. State*, 184 Md. App. 465, 477 (2009).

In *State v. Jones*, 445 Md. 324 (2015), the Maryland Court of Appeals held that, in general, the doctrine of *laches* may bar the right to seek *coram nobis* relief. The court added that for purposes of determining delay under *laches*, delay commences when a petitioner for a writ of *coram nobis* knew or should have known of the facts underlying the alleged error.

The case involved a petition for writ of error *coram nobis*, filed in October 2012, attesting that a 1999 conviction for a drug offense was the result of an involuntary guilty plea. The court determined that for purposes of *laches*, delay began when the petitioner knew or should have known that he had involuntarily pled guilty because he had not been informed of the elements or nature of the drug offense charge. The court also noted that the prejudice that resulted from this delay not only compromised the State's ability to defend against the petition for writ of error *coram nobis* (filed approximately 13 years later) but also placed the State in a less favorable position to reprosecute the petitioner for the drug offense.

Additional Information

Prior Introductions: None.

Cross File: None designated. However, HB 755 (Delegate Moon, *et al.* – Judiciary) is identical.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; *Amicus Curiam*; Black's Law Dictionary; Department of Legislative Services

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md/kdm

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