

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 676

(Senator West)

Judicial Proceedings

Judiciary

Criminal Procedure - Postconviction Review - State's Motion to Vacate

This bill authorizes a court with jurisdiction over the case, on motion of the State, to vacate a probation before judgment or conviction when (1) there is newly discovered evidence that could not have been discovered by due diligence in time for a new trial and creates a substantial or significant probability that the result would have been different or (2) the State received new information after the entry of probation before judgment or conviction that calls into question the integrity of the probation before judgment or conviction. The interest of justice and fairness must also justify vacating the probation before judgment or conviction.

Fiscal Summary

State Effect: The bill can be handled with existing budgeted resources.

Local Effect: The bill can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes requirements for filed motions, requires notification of the defendant and the victim or the victim's representative, and authorizes a defendant to file a response to the motion.

The State may make a motion at any time after the entry of the probation before judgment or conviction in the case. The court must hold a hearing on a motion if the bill meets the specified requirements for a motion. The State has the burden of proof in a proceeding on

the motion. The court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. In ruling on a motion, the court, as it considers appropriate, may vacate the conviction or probation before judgment and discharge the defendant or deny the motion. Either party may take an appeal from an order entered on the motion.

Current Law: A person convicted of a crime has a number of alternatives for seeking review of a conviction. The options include (1) an appeal; (2) review at the trial court level (motion for new trial and a petition for writ of actual innocence); (3) petition under the Uniform Postconviction Procedure Act; and (4) *coram nobis*. In general, a defendant is not limited to any particular option for judicial review and may pursue multiple avenues for review in connection with a single conviction. However, the pursuit of these options must be initiated by the defendant, not the State. Some of these options are discussed below.

Motion for a New Trial

In general, a defendant has 10 days after the verdict to file a motion for a new trial, and the trial court has discretionary authority to grant a new trial if the court finds that a new trial is in the interest of justice. There are several grounds on which a defendant may base a motion for a new trial. However, there are specific grounds that allow the defendant more time to file the motion, including (1) an unjust or improper verdict; (2) fraud, mistake, or irregularity; (3) newly discovered evidence; or (4) an act of prostitution as a victim of human trafficking.

A defendant has 90 days after sentencing to file a motion for a new trial based on either an unjust or improper verdict, such as a verdict contrary to evidence, or fraud, mistake, or irregularity. Allegations that constitute fraud, mistake, or irregularity include misconduct of a juror, bias and disqualification of jurors, misconduct or error of the judge, and prosecutorial misconduct.

A defendant has one year after sentencing or the date on which the court received a mandate (*i.e.*, ruling) from the Court of Appeals or the Court of Special Appeals, whichever is later, to file a motion for a new trial based on newly discovered evidence. This motion must allege that newly discovered evidence exists that could not have been discovered by due diligence within 10 days after the original verdict. However, a defendant may file a motion for a new trial based on newly discovered evidence at any time, if the newly discovered evidence is based on DNA identification testing or other generally accepted scientific techniques, the results of which, if proven, would show the defendant is actually innocent of the crime.

Uniform Postconviction Procedure Act

Any person convicted of a crime in the District Court or a circuit court has a right to institute a proceeding for postconviction relief in a circuit court to set aside or correct a verdict. This right extends to a sentence of parole or probation, as well as confinement. Relief under the Uniform Postconviction Procedure Act is available to a person confined under sentence of imprisonment or on parole or probation.

A postconviction proceeding is not an inquiry into guilt or innocence; the trial and appellate review are where that issue is determined. Postconviction proceedings focus on whether the sentence or judgment imposed is in violation of the U.S. Constitution or the constitution or laws of the State. In theory, the scope of this inquiry is quite broad. The postconviction court may not, however, grant relief based on an allegation of a particular error if the petitioner has finally litigated or waived the error. As a practical matter, this requirement bars the petitioner from obtaining relief for most trial errors.

Unless extraordinary cause is shown, a petition for postconviction relief must be filed within 10 years of the sentence. The petition must be filed in the circuit court for the county where the conviction took place. A person may only file one petition arising out of each trial or sentence. A defendant is entitled to a hearing on the merits, the assignment of counsel, and a right of appeal. In the interests of justice, a court may reopen a postconviction proceeding that was previously decided.

Writ of Error Coram Nobis

Another way to challenge the legality of a conviction is to file a petition for a writ of error *coram nobis*. The writ is only available to a person who (1) challenges a conviction based on constitutional, jurisdictional, or fundamental grounds, whether factual or legal; (2) rebuts the presumption of regularity that attaches to the criminal case; (3) faces significant collateral consequences from the conviction; (4) asserts an alleged error that has not been waived or finally litigated in a prior proceeding; and (5) is not entitled to another statutory or common law remedy. The purpose of the writ of error *coram nobis* is to request that a court reopen or reconsider a matter that the court has already decided, based on an error of fact or law that was not raised as an issue at trial. For example, one ground for a writ of error *coram nobis* is that the defendant entered into an involuntary guilty plea.

The writ is 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)).

Coram nobis may be used by a defendant who is not in custody (*i.e.*, not incarcerated, or on parole or probation) and faces collateral consequences as a result of a conviction.

Writ of Actual Innocence

A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a writ of actual innocence in the circuit court for the county in which the conviction was imposed. If the conviction resulted from a trial, the person must claim that there is newly discovered evidence that (1) creates a substantial or significant possibility that the result may have been different and (2) could not have been discovered in time to move for a new trial. If the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, the person must claim that there is newly discovered evidence that (1) establishes by clear and convincing evidence the petitioner's actual innocence and (2) could not have been discovered in time to move for a new trial.

The State must be notified of the petition and may file a response. A victim or the victim's representative must be notified, as well, and has the right to attend the hearing on the petition. If the court finds that the petition fails to assert grounds on which relief may be granted, the court may dismiss the petition without a hearing.

In the case of a petition where the conviction resulted from a trial, the court may (1) set aside the verdict; (2) resentence; (3) grant a new trial; or (4) correct the sentence, as the court considers appropriate.

If the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, when assessing the impact of the newly discovered evidence on the strength of the State's case against the petitioner at the time of the plea, the court may consider admissible evidence submitted by either party, in addition to the evidence presented as part of the factual support of the plea, that was contained in law enforcement files in existence at the time the plea was entered.

If the court determines that the evidence establishes the petitioner's actual innocence by clear and convincing evidence, the court may allow the petitioner to withdraw the guilty plea, Alford plea, or plea of *nolo contendere* and (1) set aside the conviction; (2) resentence; (3) schedule the matter for trial; or (4) correct the sentence, as the court considers appropriate. When determining the appropriate remedy, the court may allow both parties to present any admissible evidence that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence. The State or the petitioner may appeal an order entered by the court on a petition filed for a conviction that resulted from these pleas.

Background: The Baltimore City Gun Trace Task Force was created in 2007 as an elite unit within the Baltimore City Police Department intended to pursue violent criminals and persons illegally possessing and using guns. In 2017, eight of the nine members of the task force were charged with crimes including racketeering, robbery, extortion, overtime pay fraud, and filing false paperwork. The officers allegedly pocketed hundreds of thousands of dollars discovered while searching the homes and cars of criminals and some innocent civilians. All eight members who were indicted either pled guilty or were convicted of several federal charges.

According to news reports, an estimated 1,300 cases may have been affected by the task force's activities. The Office of the State's Attorney for Baltimore City is reviewing past cases where task force officers were material witnesses to determine if convictions need to be vacated. The officers involved may have committed crimes as far back as 2008.

Additional Information

Prior Introductions: None.

Cross File: HB 874 (Delegate Barron, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Office of the Public Defender; *The Baltimore Sun*; *Chicago Tribune*; *Washington Post*; *The Daily Record*; CBS Baltimore; Department of Legislative Services

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