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# Recent Development: Smallwood v. State: A Writ of Actual Innocence Is Not Available To Convicted Defendants Who Are Guilty Of Their Crime, Even If They Are Deemed Not Criminally Responsible

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## RECENT DEVELOPMENT

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### ***SMALLWOOD V. STATE: A WRIT OF ACTUAL INNOCENCE IS NOT AVAILABLE TO CONVICTED DEFENDANTS WHO ARE GUILTY OF THEIR CRIME, EVEN IF THEY ARE DEEMED NOT CRIMINALLY RESPONSIBLE.***

**By: Andrew Siske**

The Court of Appeals of Maryland held that convicted defendants must allege that they did not actually commit the crime resulting in their conviction to be eligible to petition for a writ of actual innocence under section 8-301 of Criminal Procedure Article of the Maryland Code. *Smallwood v. State*, 451 Md. 290, 323, 152 A.3d 776, 795 (2017). Additionally, the court ruled that a claim of not criminally responsible is not equivalent to an assertion of actual innocence as required by the court's interpretation of the actual innocence statute. *Id.*

Dameron Smallwood ("Smallwood") was physically and verbally abused by his mother throughout his youth. In mid-October 1984, Smallwood was suspended from school for talking back to a teacher. Enraged, Smallwood's mother locked him in the house for several days. On October 22, 1984, Smallwood's mother finally let him leave the house, at which point he went to visit an apartment complex where they had previously lived. He knocked on the door of Madge K. Gibson ("Gibson"), a stranger to Smallwood, and claimed to be delivering a package that required Gibson's signature. When Gibson opened the door, Smallwood stabbed her ten times, subsequently causing her death.

Smallwood was indicted as an adult for first-degree murder and related offenses. He petitioned for a reverse waiver hearing to move his case to juvenile court. During the reverse waiver hearing in the Circuit Court for Baltimore County, Dr. Ellen McDaniel ("McDaniel") and other psychiatrists testified regarding Smallwood's mental health. McDaniel testified that Smallwood often coped with his abuse by fantasizing about Jack the Ripper and killing women. Nevertheless, McDaniel and another expert witness opined that Smallwood was not "legally insane" at the time he attacked Gibson. Neither party otherwise discussed or contested Smallwood's criminal responsibility. The circuit court denied Smallwood's request for a reverse waiver. On March 13, 1985, Smallwood entered a plea of not guilty on an agreed statement of facts and was convicted of first-degree murder and other related offenses. Smallwood received a life sentence.

In 2009, Smallwood's new attorney urged McDaniel to reconsider her 1985 opinion that Smallwood was not "legally insane" at the time of the crime. In 2011, McDaniel concluded that her 1985 assessment of Smallwood was flawed and that Smallwood was not criminally responsible ("NCR") when he committed the offense. McDaniel attributed her revised opinion to scientific advancements in understanding how trauma impacts

brain development, changes to the Diagnostic and Statistical Manual of Mental Disorders, and McDaniel's increased professional experience.

On August 29, 2011, Smallwood filed a Petition for a Writ of Actual Innocence under section 8-301 of the Criminal Procedure Article ("section 8-301"). As required by the statute, Smallwood characterized McDaniel's revised opinion as "newly discovered evidence" which created a substantial likelihood that Smallwood's initial prosecution may have resulted differently. On November 2, 2012, the Circuit Court for Baltimore County conducted an evidentiary hearing on Smallwood's petition and considered both McDaniel's revised opinion and opposing testimony from the State's psychiatric expert.

On February 12, 2013, the circuit court denied Smallwood's petition. The court concluded that Smallwood was ineligible for relief under the theory of actual innocence because he alleged that he was NCR at the time the offense was committed, not that he was actually innocent. The Court of Special Appeals of Maryland affirmed the circuit court's denial, holding that an individual must explicitly deny committing the crime in question to be eligible to petition for a writ of actual innocence pursuant to section 8-301. The court of appeals granted Smallwood's petition for a *writ of certiorari*.

The Court of Appeals of Maryland began by analyzing whether section 8-301 applies to a convicted defendant who later presents "newly discovered evidence" suggesting that he was NCR at the time of the offense. *Smallwood*, 451 Md. at 309, 152 A.3d at 787. First, the court considered the plain meaning of the statute, noting that the title of a statute is relevant to determining its intent and purpose. *Id.* at 312, 152 A.3d at 788 (citing *Mayor & Council of Rockville v. Rylyns Enters.*, 372 Md. 514, 555, 815 A.2d 469, 493 (2002)). While section 8-301 is entitled "Petition for writ of actual innocence," the phrase "actual innocence" is not defined or clarified within the statute. *Smallwood*, 451 Md. at 312, 152 A.3d at 788. Accordingly, the court turned to the dictionary definitions of "actual" and "innocence," concluding that "actual innocence" means "the defendant did not commit the crime or offense for which he or she was convicted." *Id.* at 313, 152 A.3d at 789.

Next, the court considered the statutory scheme surrounding section 8-301 to discern the purpose of the statute. *Smallwood*, 451 Md. at 313, 152 A.3d at 789. Prior to 2001, only criminal defendants alleging a constitutional violation or presenting "newly discovered evidence" within one-year of either the sentence's imposition or the last mandated appeal could petition for post-conviction relief. *Id.* at 313-14, 152 A.3d at 789-90 (citing MD. CODE ANN., CRIM. PROC. § 7-102; Md. R. 4-331). In 2001, the General Assembly enacted section 8-201 of the Criminal Procedure Article ("section 8-201"), permitting individuals convicted of violent crimes to petition for DNA testing of scientific evidence possessed by the state related to the individual's conviction. *Smallwood*, 451 Md. at 315, 152 A.3d at 790. Previous court of appeals' decisions found that section 8-201 was enacted to provide relief to convicted persons who were "actually innocent," meaning

that they did not in fact commit the crime underlying their conviction. *Id.* at 316, 152 A.3d at 790-91 (citing *Gregg v. State*, 409 Md. 698, 715, 97 A.2d 999, 1009 (2009) (citations omitted)).

The court then turned to testimony in support of section 8-301 to further elucidate its purpose. *Smallwood*, 451 Md. at 316-17, 152 A.3d at 791. Lawmakers testified about the need to fill the statutory gap for convicted persons unable to obtain post-conviction relief because their newly discovered evidence was either non-biological or discovered after the one-year limitation in Maryland Rule 4-331. *Id.* (citations omitted). Further, testimony emphasized how section 8-301 would enable convicted defendants to assert their innocence, and that the statute would only apply to a narrow group of convicted individuals. *Smallwood*, 451 Md. at 318, 319, 152 A.3d at 792, 793 (citations omitted).

Next, the court clarified the relationship between section 8-301 and Maryland Rule 4-332 (“Rule 4-332”), even though *Smallwood* filed his petition before the rule took effect. *Smallwood*, 451 Md. at 320, 152 A.3d 793. Rule 4-332 requires defendants to assert, in their actual innocence petition, that they did not commit the crime resulting in their conviction. *Id.* *Smallwood* argued that the court of appeals can only enact rules, which concern practice and procedure, and that Rule 4-332 improperly abridges the substance of section 8-301. *Id.* at 320-21, 152 A.3d 793-94. The court, however, held that based on its own analysis, section 8-301 already demands what Rule 4-332 requires. *Id.* Further, the court noted that prior to Rule 4-332, precedent addressed the need for procedural direction regarding how section 8-301 should be implemented. *Id.* (citing *State v. Matthews*, 415 Md. 286, 297-98, 999 A.2d 1050, 1057 (2010)). Consequently, the court ruled that Rule 4-332 properly guides the application of section 8-301. *Smallwood*, 451 Md. at 321, 152 A.3d at 794.

Finally, the court considered whether a determination of NCR precludes a finding of guilt. *Smallwood*, 451 Md. at 321-22, 152 A.3d at 794-95. Previous decisions have held that a finding of NCR is separate from a finding of guilt or innocence, and that a criminal defendant could be found both guilty and NCR. *Id.* at 322, 152 A.3d at 794 (citing *Langworthy v. State*, 284 Md. 588, 594, 399 A.2 579, 581-82 (1979)). The court concluded that a claim of NCR is not the same as a claim of being “actually innocent.” *Smallwood*, 451 Md. at 322, 152 A.3d at 794-95. Thus, *Smallwood* was ineligible to seek relief under section 8-301. *Id.* at 322-23, 152 A.3d at 794-95.

In *Smallwood*, the Court of Appeals of Maryland held that the actual innocence statute provides relief only to criminal defendants who can allege that they did not commit the crime underlying their conviction. This holding conclusively defines “actual innocence” under section 8-301 and illuminates the connection between the statute and Rule 4-332. Accordingly, *Smallwood* clarifies what criminal defense attorneys must include in actual innocence petitions. In doing so, *Smallwood* narrows the population of defendants eligible for relief under the actual innocence statute. However, it leaves open

another statutory gap that may limit mentally ill defendants who obtain “newly discovered evidence” suggesting that they should have been institutionalized rather than incarcerated. Unless convicted defendants erroneously deemed criminally responsible can successfully challenge *Smallwood’s* interpretation of section 8-301, their only hope lies in the General Assembly.