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Recent Development: State v. Hunt: A Petitioner Who Files for a Writ of Actual Innocence Has the Right to a Hearing Based on Newly Discovered Evidence When the Pleading Substantially Complies with Md. Crim. Proc. § 8-301 and Md. Rule 4-332

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RECENT DEVELOPMENT

STATE V. HUNT: A PETITIONER WHO FILES FOR A WRIT OF ACTUAL INNOCENCE HAS THE RIGHT TO A HEARING BASED ON NEWLY DISCOVERED EVIDENCE WHEN THE PLEADING SUBSTANTIALLY COMPLIES WITH MD. CRIM. PROC. § 8-301 AND MD. RULE 4-332.

By: Daniel M. Weir

The Court of Appeals of Maryland held that the trial court erred in denying a hearing on a petition for a writ of actual innocence based on newly discovered evidence, when petitioners substantially complied with the pleading requirements under Section 8-301 of the Maryland Code, Criminal Procedure Article (“section 8-301”) and Maryland Rule 4-332. *State v. Hunt*, 443 Md. 238, 264, 116 A.3d 477, 492 (2015).

In 1991, Ronnie Hunt (“Hunt”) and Kevin Hardy (“Hardy”) were convicted of first-degree murder and the use of a handgun in the commission of a crime of violence in unrelated cases in the Circuit Court for Baltimore City. *Hunt*, 443 Md. at 242-45, 116 A.3d at 479-81. Hunt and Hardy were both sentenced to life imprisonment. *Id.* Joseph Kopera (“Kopera”), a Maryland law enforcement ballistics expert, provided expert witness testimony for the State in both trials. *Id.* at 240, 116 A.3d at 478-79.

In 2007, The Baltimore Sun reported concerns over Kopera’s expert status, speculating that Kopera lied under oath about his academic credentials for over twenty years. Following this report, Hunt claimed that Kopera falsified testimony under fraudulent expert qualifications, and Hardy claimed that Kopera’s supposed credentials gave his testimony undue weight.

Hunt and Hardy filed separate Petitions for Writs of Actual Innocence in 2011 and 2012, respectively. Hunt and Hardy claimed that the 2007 report describing Kopera’s alleged fabrications as an expert witness constituted “newly discovered evidence.” Hunt argued that Kopera falsified crucial information about his credentials and the murder weapon, and without this testimony the State could not have proven its case beyond a reasonable doubt. Hardy claimed that Kopera’s testimony under his falsified credentials unduly strengthened the State’s argument, and without Kopera’s testimony the verdict would have been decided differently. The circuit court denied the petitions and the subsequent motions for reconsideration.

Hunt and Hardy then filed separate pro se appeals in the Court of Special Appeals of Maryland, claiming that the circuit court erred when it denied their petitions without a hearing. The court of special appeals agreed, and in separate opinions reversed the circuit court. The State petitioned the Court of Appeals of Maryland for a writ of certiorari in both cases, asking it to consider whether the court of special appeals incorrectly reversed the circuit court. The State argued Hunt and Hardy did not strictly comply with the

statutory requirements of section 8-301 of the Criminal Procedure Article (“CP”), and the court of special appeals’s decision was inconsistent with its governing authority. The court of appeals granted certiorari and consolidated the two cases to consider their common issues.

The court first noted that the denial of a petition for a writ of actual innocence is “an immediately appealable order,” and the court reviews the denial de novo. *Hunt*, 443 Md. at 247, 116 A.3d at 482.

The court began its analysis by determining that Hunt and Hardy satisfied all the relevant statutory requirements for a petition for a writ of actual innocence, with two exceptions. *Hunt*, 443 Md. at 252-55, 116 A.3d at 485-87 (citing Md. R. 4-332 and CP § 8-301). Hardy lacked two statutorily required elements in his pleading, including a list of his crimes with their respective dates and sentences, and a recitation of the procedural history. *Hunt*, 443 Md. at 252-55, 116 A.3d at 485-87 (citing Md. R. 4-332(d)(3-5)). The court of appeals stated that the circuit court failed to consider whether Hardy substantially complied with the statute. *Id.* at 256, 116 A.3d at 487.

Md. Rule 4-332 went into effect October 1, 2011, and created additional pleading requirements for writs of actual innocence. *Hunt*, 442 at 249, 116 A.3d at 483. The court found no appellate cases in which a petition filed after October 2011 was dismissed for a lack of compliance with technical requirements of Rule 4-332. *Hunt*, 443 at 256, 116 A.3d at 487 (citation omitted). Petitions that were dismissed after October 2011 violated substantive requirements. *Hunt*, 443 at 256, 116 A.3d at 487.

The court next relied on *Douglas v. State*, which also concerned a petition for a writ of actual innocence based on newly discovered evidence and Kopera’s alleged falsifications. *Hunt*, 443 Md. at 250-51, 116 A.3d at 484-85. (citing *Douglas v. State*, 423 Md. 156, 31 A.3d 250 (2011)).

Douglas established that a petitioner asserting grounds for relief does not have to prove those grounds, but must show that, if proven, the grounds could entitle him to relief. *Hunt*, 443 Md. at 252, 116 A.3d at 488 (citing *Douglas*, 423 Md. at 185, 31 A.3d at 267). These petitions are viewed in light most favorable to the petitioner, accepting all reasonable inferences that can be drawn from the petition. *Id.* at 253, 116 A.3d at 486 (citing *Douglas*, 423 Md. at 165, 31 A.3d at 255). The court liberally construes the filings of pro se inmates, particularly when the statute serves a remedial purpose, as in section 8-301, for example. *Hunt*, 443 Md. at 252, 116 A.3d 485.

To determine whether Hunt and Hardy’s newly discovered evidence could create a “substantial or significant possibility that the result of the trial may have been different,” the court must determine whether Kopera “merely impeach[ed]” himself versus “impeached” himself. *Hunt*, 443 Md. at 259, 116 A.3d at 489 (emphasis added) (quoting Md. R. 4-332(d)(8); citing *Campbell v. State*, 373 Md. 637, 669, 821 A.2d 1, 20 (2003), (“evidence must be more than merely cumulative or impeaching”) (internal citations omitted).

The court of appeals cautioned that Hunt and Hardy’s challenge to Kopera’s falsified academic credentials could be unsuccessful because the kind of expertise on which Kopera’s testimony was based did not require the

academic degrees he purported to have. *Hunt*, 443 Md. at 260 116 A.3d at 490. However, in *Douglas*, where the complainant's challenge to Kopera's expertise mirrored *Hunt* and *Hardy's*, even when other expert witnesses corroborated Kopera's testimony the court could have found that Kopera's falsification created a substantial or significant possibility that the result may have been different. *Id.* at 258, 116 A.3d 488-89 (citing *Douglas*, 423 Md. at 185-86, 31 A.3d at 267-68). Viewing the facts in light most favorably to *Hunt* and *Hardy*, the court found they satisfied their burdens of proof and were entitled to relief. *Hunt*, 258, 116 A.3d 488-89.

In its petition, the State pointed to the court's inconsistency in dealing with Kopera's twenty years of testifying under false academic credentials. *Hunt*, 443 Md. at 247, 116 A.3d at 482. The court responded by stating that the prior cases were not before it, and the court was unable to comment on every specific ruling. *Id.* at 263, 116 A.3d at 491. The judgment of the court of special appeals was affirmed because *Hunt* and *Hardy's* petitions conceivably could have entitled them to relief. *Id.* at 264 116 A.3d at 492.

The holding in *Hunt* expands the court's discretion to allow an incomplete petition for a writ of actual innocence to be granted, so long as the petition substantially complies with the statutory filing requirements. This substantial compliance standard allows a pro se petitioner to file a petition for a writ of actual innocence with more room for error, and therefore creates a greater volume of acceptable petitions. While the substantial compliance standard is designated for pro se petitioners only, the court's critique of the dichotomy approach to whether an expert's testimony "impeaches" or "merely impeaches" could be the standard for petitioners with representation. In light of Kopera's twenty years of testimony under falsified credentials, the court suggests that the system allow for higher scrutiny of experts by allowing a more flexible appellate standard. However, this standard conflates two factual distinctions into one broad conclusion, making it difficult for pro se litigants and attorneys alike to predict whether a particular petition satisfies the statutory filing requirements.