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RECENT DEVELOPMENT

JACKSON V. STATE: SUCCESSIVE POST-CONVICTION PETITIONS ARE NOT BARRED BY THE DOCTRINE OF *RES JUDICATA* OR MARYLAND RULE 4-704; A PETITION FOR DNA TESTING WILL BE DENIED IF THE EVIDENTIARY THRESHOLD FOR A WRONGFUL CONVICTION CLAIM IS NOT MET.

By: Kayla M. DiNuccio

The Court of Appeals of Maryland held that the doctrine of *res judicata* and Maryland Rule 4-704 do not bar successive DNA petitions. *Jackson v. State*, 448 Md. 387, 406, 139 A.3d 976, 987 (2016). The court further held that denying Jackson's petition for DNA testing without a hearing under Maryland Rule 4-709 was proper, because none of his assertions would have produced exculpatory evidence. *Id.* at 411, 139 A.3d at 990.

In 1993, Steven Jackson ("Jackson") entered an Alford plea to second-degree rape of Patricia M. in the Circuit Court for Baltimore County. Jackson was sentenced to twenty years imprisonment with all but four years suspended and five years supervised probation. In 1995, the balance of Jackson's sentence was suspended and he was placed on probation. While released on probation, Jackson was convicted of two additional counts of second-degree rape.

Thereafter, Jackson filed numerous petitions for DNA testing pursuant to section 8-201(c) of the Criminal Procedure Article of the Maryland Code ("section 8-201(c)") for the rape of Patricia M. In 2005, Jackson filed his first petition for DNA testing, which was granted, but yielded inconclusive results. In 2008, Jackson filed another petition, which was denied. In 2009, Jackson filed a petition for post-conviction relief, which was denied. In 2013, Jackson filed a fourth petition for DNA testing, which was again denied. Jackson subsequently appealed the denial of the 2013 petition but later withdrew.

In 2015, Jackson filed his fifth petition for DNA testing, claiming that his DNA was not on Patricia M.'s underwear. Jackson asserted that testing the underwear using Touch DNA as well as slides from her Sexual Assault Forensics Exam would produce exculpatory or mitigating evidence. The circuit court denied the petition. Jackson appealed directly to the Court of Appeals of Maryland to determine whether the circuit court erred in denying the DNA testing petition and request for a hearing. The State moved to dismiss the appeal, arguing that *res judicata* and Maryland Rule 4-704 ("Rule 4-704") bar successive petitions for DNA testing.

The Court of Appeals of Maryland began its analysis by determining whether the legislature intended to allow successive DNA petitions. *Jackson*, 448 Md. at 395-98, 139 A.3d at 981-83. To establish procedures

for identification purposes in post-conviction cases, the General Assembly codified section 8-201(c), which contained subsections that would have prevented successive DNA petitions. *Id.* However, in 2003, the legislature eased these restrictions on consecutive DNA petitions. *Id.* at 398-99, 139 A.3d at 983-94 (citing 2003 Maryland Laws, Chapter 240).

The revised version of section 8-201(c) states that a court shall order DNA testing if a petitioner satisfies two requirements: “(1) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.” *Jackson*, 448 Md. at 398, 139 A.3d at 982-83. Additionally, successive petitions for DNA testing are not limited as long as each petition has a full description of all proceedings, case information, and pertinent motions and decisions. *Id.* at 400-01, 139 A.3d at 984 (citing Md. R. 4-704). Ultimately, the court reasoned that Rule 4-704 does not bar filing successive DNA petitions. *Jackson*, 448 Md. at 401, 139 A.3d at 984.

Next, the court looked to a variety of sources to determine whether the doctrine of *res judicata* was applicable to successive DNA petitions. *Jackson*, 448 Md. at 402 n.16, 139 A.3d at 985 n.16. *Res judicata* has three elements: (1) same parties; (2) identical claims; and (3) a final judgment on the merits. *Id.* at 401-02, 139 A.3d at 984-85. The court looked to the committee minutes for Rule 4-704 to determine if the issue of *res judicata* was raised during deliberations. *Id.* at 401, 139 A.3d at 984. The committee made no decision as to whether *res judicata* should apply in criminal cases. *Id.*

Given that Maryland is silent on the issue of successive petitions for DNA testing, the court had to look to other jurisdictions for guidance. *Jackson*, 448 Md. at 402 n.16, 139 A.3d at 985 n.16. In *State v. Ayers*, an Ohio intermediate appellate case, Ayers appealed the denial of his second consecutive petition for DNA testing in which *res judicata* was at issue. *Id.* at 402, 139 A.3d at 985 (citing *State v. Ayers*, 923 N.E.2d 654, 659 (Ohio Ct. App. 2009)). The court in *Ayers* held that because DNA testing can be “outcome determinative” in exonerating the wrongfully convicted, and given that the legislature lowered the standards for filing DNA petitions, *res judicata* was not applicable. *Jackson*, 448 Md. at 402-05, 139 A.3d at 985-86 (citing *Ayers*, 923 N.E.2d at 659). Upon this persuasive reasoning, and because the Maryland Legislature eased the restrictions for successive filings, the court of appeals denied the State’s motion to dismiss. *Jackson*, 448 Md. at 406, 139 A.3d at 987.

Next, the court turned to the issue of whether Jackson was entitled to a hearing pursuant to his petition. *Jackson*, 448 Md. at 406, 139 A.3d at 987. Maryland Rule 4-709 states that the court shall hold a hearing if the petitioner satisfies certain requirements. *Id.* at 408-09, 139 A.3d at 988-89. Applicable here were the requirements of standing and a likelihood that the DNA testing would have the “scientific potential to produce exculpatory or

mitigating evidence relevant to a claim for wrongful conviction.” *Id.* Jackson satisfied the first factor but the court found he was unable to meet the second factor. *Id.*

While there was no transcript of the hearing, Jackson’s Alford Plea was ratified in his 1994 motion for reduction of sentence. *Jackson*, 448 Md. at 410, 139 A.3d at 989. Although Jackson’s counsel argued he never raped her, had the case gone to trial, the State would have proven that Jackson raped Patricia M. based on an agreed statement of facts. *Id.* at 410, 139 A.3d at 989-90. The court further stated that because Patricia M. could not remember whether he ejaculated or not, testing her underwear would not produce mitigating or exculpatory evidence. *Id.* As such, the court affirmed the denial of Jackson’s petition and request for a hearing, because his petition did not demonstrate that the tests would exculpate him for second-degree rape under section 8-201(c). *Id.* at 411, 139 A.3d at 990.

In *Jackson*, the Court of Appeals of Maryland held that *res judicata* and Rule 4-704 do not bar successive DNA petitions. However, if the burden under section 8-201(c) is not met, the request for a petition may be denied without a hearing. Although this decision reflects the importance in exonerating the wrongfully convicted, it is still not entirely clear under what facts a DNA petition may potentially be granted. Consequently, defense attorneys will still face challenges in deciding what cases in which DNA petitions should be sought.