

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

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v.

Civil Case No. _____

STATE OF MARYLAND,
Respondent

**PETITION FOR WRIT OF ERROR CORAM NOBIS AND MOTION TO REINSTATE
DE NOVO APPEAL**

INTRODUCTION

Petitioner Antoine Pettiford respectfully asks this Court to issue a writ of error coram nobis and grant his motion to reinstate his de novo appeal (Case Number 301249002) from his misdemeanor conviction in the District Court of Maryland for Baltimore City (Case Number 4B01374958). Mr. Pettiford also requests a hearing on this matter.

The reason for this Petition and Motion is that the Circuit Court of Maryland for Baltimore City erroneously dismissed Mr. Pettiford’s de novo appeal in violation of Maryland law and the due process clause of the United States Constitution. The Circuit Court did this by failing to provide Mr. Pettiford with notice of the scheduled date of the de novo trial and failing to establish that Mr. Pettiford knowingly and voluntarily waived his right to be present at such trial. In support of this argument, Mr. Pettiford states the following:

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2001, in the District Court of Maryland for Baltimore City, Mr. Pettiford, who was represented by defense counsel David R. Solomon, proceeded to trial on the charges of second degree assault and disorderly conduct. The district court acquitted Mr. Pettiford on the disorderly

conduct charge; however, the court found Mr. Pettiford guilty of the second degree assault charge. See Exhibit 1. The court then sentenced Mr. Pettiford to a one year suspended sentence with a one year term of probation.

Subsequent to this sentencing, Mr. Pettiford's counsel, Mr. Solomon, timely filed a notice of appeal on August 20, 2001, and paid the appropriate filing fees. See Exhibit 2. Not only did Mr. Solomon file a notice of appeal, but on August 29, 2001, in a letter addressed to the district court, Mr. Solomon specifically requested that he be notified of the arraignment date in the Circuit Court of Maryland for Baltimore City. See Exhibit 3.

Mr. Pettiford's case was then docketed in the Circuit Court on September 10, 2001, and his de novo trial date was set for October 24, 2001. See Exhibit 4. However, neither Mr. Solomon nor Mr. Pettiford were present before the Court on October 24, 2004, as neither of them received notice of the trial date. See Exhibit 5 and 6. The Court acknowledged that there was no indication in the record that a summons was issued to either Mr. Solomon or Mr. Pettiford for a court appearance on the de novo trial. See Exhibit 7. Accordingly, the Court re-set the trial date for November 28, 2001, and ordered that a summons be issued to Mr. Pettiford and his attorney for that trial date. See Exhibit 7.

However, once again, neither Mr. Solomon nor Mr. Pettiford received notice for this date. The court record contains no summons or other document with the trial date addressed to Mr. Solomon. As such, it could not be more clear that Mr. Solomon was not provided notice as he specifically requested and as the Court had unequivocally ordered. Although there is copy of a summons addressed to Mr. Pettiford in the court file, there is no indication that the summons was actually sent to Mr. Pettiford or that he received it. See Exhibit 8.

Neither Mr. Pettiford nor Mr. Solomon appeared in court on November 28, 2001, for the de novo trial. See Exhibit 9. At that time, the Court, without making inquiry as to their whereabouts or whether they were properly notified of the court date, the Court summarily dismissed the appeal. The following petition for writ of error coram nobis and motion to reinstate the appeal pursuant to Md. R. Ct. 7-112 (e)(3) follows.

ARGUMENT

I. PETITION FOR WRIT OF ERROR CORAM NOBIS

A. A Petition for Writ of Error Coram Nobis is a Proper Vehicle for Relief.

Mr. Pettiford properly seeks relief in the form of a writ of error coram nobis pursuant to Skok v. State, 760 A.2d 647, 661 (Md. 2000). In that case, the Court of Appeals significantly expanded the scope of coram nobis relief:

[T]here should be a remedy for a convicted person who is not incarcerated and not on parole or probation who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds. Such person should be able to file a motion for coram nobis relief regardless of whether the alleged infirmity in the conviction is an error of fact or an error of law.

Id.

Mr. Pettiford meets all of this criteria outlined in Skok.

_____First, Mr. Pettiford is not incarcerated on his 2001 assault conviction and is not on parole or probation from this conviction.¹

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One is not entitled to challenge a criminal conviction by a coram nobis proceeding if another statutory or common law remedy is available. See Skok, 760 A.2d at 662. In this case, Mr. Pettiford has no statutory or common law remedy available to him apart from the writ of coram nobis. He cannot challenge the conviction by a petition for writ of habeas corpus or a petition under the Uniform Post Conviction Procedure Act, Md. Code Crim. Proc. § 7-101 et seq., because such actions

Second, Mr. Pettiford faces significant collateral consequences from the state court assault conviction. In particular, Mr. Pettiford was sentenced on May 21, 2004, in the United States District Court of Maryland to 188 months imprisonment after his conviction for a felon in possession of a firearm offense. See Exhibit 9. The assault conviction is of critical importance because it is one of the convictions relied upon by the federal court in finding that Mr. Pettiford was as an Armed Career Criminal under 18 U.S.C. § 924(e). This statute required the federal court to impose a mandatory minimum sentence of fifteen years imprisonment (without parole) and because of his status as an Armed Career Criminal, the federal court was required to sentence Mr. Pettiford under the Federal Sentencing Guidelines to a prison term of 188-235 months. Thus, the collateral consequences of Mr. Pettiford's assault conviction cannot be minimized. See State v. Hicks, 733 A.2d 1056, 1056 (Md. 2001) (holding that a possible increase in a pending federal sentencing as a result of a state conviction was a "significant collateral consequence" for which coram nobis relief was appropriate).

Third, Mr. Pettiford legitimately challenges his conviction on fundamental or constitutional grounds. As argued more fully below, the Circuit Court committed constitutional error by dismissing Mr. Pettiford's de novo appeal without providing Mr. Pettiford with notice of the scheduled date of the de novo trial and without establishing that Mr. Pettiford knowingly and

require the defendant to be incarcerated or on probation or parole pursuant to the conviction being challenged. Moreover, although a remedy is available to him via a motion to reinstate his de novo appeal pursuant to Md. R. Ct. 7-112(3), this is not a statutory or common law remedy that precludes relief under a writ of error coram nobis. See Skok, 760 A.2d at 663 n.9 (holding that a relief pursuant to a Md. Rule of Court "is not a common law or statutory remedy, and thus, the possibility of relief under the rule would not preclude coram nobis relief"); see also State v. Kanaras, 742 A.2d 508, 515-16 (Md. 1999) (holding that remedies pursuant to Maryland Rules are not statutory remedies) (citation omitted).

voluntarily waived his right to be present at such trial.

Therefore, Mr. Pettiford respectfully asks this Court to reverse its judgement and reinstate Mr. Pettiford's de novo appeal from his assault conviction.

B. The Circuit Court Violated Mr. Pettiford's Constitutional Due Process Right to Notice of his De Novo Appeal.

A State is not required by the federal Constitution to provide appellate review of a criminal conviction; however, it is well established that once a State establishes a right to appellate review, the due process clause protects defendants at all stages of the appellate proceedings. See Griffin v. Illinois, 351 U.S. 12, 18 (1956); North Carolina v. Pearce, 395 U.S. 711, 724 (1969). This due process protection certainly encompasses a defendant's right to notice of the scheduled date of his appeal. "The right to prior notice . . . is central to the Constitution's command of due process." United States v. James Daniels Good Prop., 510 U.S. 43, 53 (1993). As explained by the United States Supreme Court, the rationale for notice could not be more plain:

For more than a century the central meaning of procedural due process has been clear: Parties, whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.

Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (citations and quotations omitted).

In light of this precedent, it is clear that Mr. Pettiford had a constitutional due process right to notice of the scheduled date of his de novo appeal from his district court conviction. A defendant convicted in the District Court of Maryland is guaranteed a right to appeal that conviction to the Circuit Court of Maryland. See Md. Code, Cts. and Jud. Proc. §12-401; see also Stone v. State, 685 A.2d 441, 445 (Md. 1996) ("[a]n appeal from a judgment of the District Court is an appeal as a matter of right"); Burch v. State, 365 A.2d 577, 578 (1976) (noting that section 12-401 "grants to a

criminal defendant, without qualification, the right to appeal from a final judgment in the District Court."). This entitlement to appeal guaranteed Mr. Pettiford the due process protection of notice. As neither Mr. Pettiford nor his counsel received notice of his appeal as commanded by the Constitution, requested by his counsel, and ordered by the Court itself, the judgment of dismissal of the appeal is invalid.

Mr. Pettiford's right to notice was particularly critical here due to the de novo status of the appeal. Although generally, when appealing a conviction, a defendant is presumed guilty and is confined to the record below, that is not the case with respect to a de novo Circuit Court appeal. De novo appeals are much more advantageous to defendants than appeals on the record below. "De novo appeals [] are treated as wholly original proceedings, that is, as if no judgment had been entered in the lower court. Thus, under the Maryland scheme, the circuit court proceeding occupies a unique position as both an appeal and a trial." Stone, 685 A.2d 441, 444 (Md. 1996) (citation and quotations omitted). As further explained by the Court of Appeals of Maryland in Garrison v. State, 711 A.2d 170, 173, 175 (Md. 1998).

In de novo appeals to the circuit court, the accused normally gets a brand new bite at the apple. . . . [T]his unqualified review in the circuit court is not simply a rehashing of the case presented in the District Court. Rather, because the appeal is actually a trial de novo, the State and the defendant, if they choose, normally must produce evidence a second time . . . Additionally, the parties in the circuit court de novo trial generally neither are limited to the evidence presented at the District Court trial nor are required to present the same evidence.

Here, because Mr. Pettiford had the right to start afresh and develop a brand new case in his de novo trial rather than fight a record below in which the district court found him guilty, there was a heightened need for notice. However, Mr. Pettiford never received an opportunity to exercise this

right due to the Court's failure to notify him or his attorney of his de novo trial date.² Accordingly, Mr. Pettiford's procedural due process right to notice was violated.³

C. The Circuit Court violated Mr. Pettiford's Constitutional Due Process Right to be Present at his De Novo Trial.

As a de novo appeal is equivalent to a new trial, all those constitutional rights that come with a trial are also applicable here. In particular, due process requires that a defendant and his counsel be present at all critical stages of a trial. See e.g., Kentucky v. Stincer, 482 U.S. 730, 745 (1987); United States v. Novaton, 271 F.3d 968, 998 (11th Cir. 2001); Miller v. Stagner, 757 F.2d 988, 995 (9th Cir. 1985). The Court of Appeals of Maryland has explicitly held that this due process right to be present applies equally to a de novo trial as it does to any other trial. See Stone, 685 A.2d at 106; Pinkney v. State, 711 A.2d 205, 213-14 (Md. 1998).

In order to effectuate a waiver of a defendant's constitutional right to be present at trial, the court must establish that the defendant has knowingly and voluntarily waived this critical right. Barnett v. State, 512 A.2d 1071, 1079 (Md. 1986); Pinkney, 711 A.2d at 213-14. The Court of Appeals of Maryland has made clear that "there can be no voluntary relinquishment of a known right to be present at one's trial if the accused does not know of . . . the trial date." Barnett, 512 A.2d at 1079.

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Mr. Pettiford's counsel, Mr. Solomon, did more than was required of him to alert the court that he needed to be notified of Mr. Pettiford's de novo trial date by specifically making a written request for notification. See Exhibit 3. Nonetheless, if this Court is inclined to fault Mr. Solomon, then Mr. Pettiford alternatively asserts that his counsel rendered him ineffective assistance of counsel in violation of the Sixth Amendment for not appropriately taking steps to monitor the scheduled date of the de novo trial.

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In addition to the federal Constitution, Md. R. Ct. 1-324 also requires that a defendant receive notice of trial by mandating that all parties receive notice of all court orders or rulings.

Moreover, the Court of Appeals of Maryland has unequivocally held that a defendant's absence from trial can only be deemed knowing and voluntary if the court has made sufficient inquiry of this matter:

[T]he record must reflect that adequate inquiry has been made to ensure that a defendant's absence is not in fact involuntary. A court cannot presume waiver from a silent record.

Pinkney, 711 A.2d at 213. In the case at bar, the Court made no inquiry to establish that Mr. Pettiford's lack of presence was knowing and voluntary prior to dismissing the de novo appeal. In particular, the record reflects no attempts by the Court to determine the whereabouts of Mr. Pettiford or his attorney, Mr. Solomon. See Exhibit 10. Additionally, the record reflects no effort by the Court to ascertain whether Mr. Pettiford or his attorney received notice of the scheduled trial date. See Exhibit 10. If the Court had examined the court file, it would easily ascertained that no summons was issued for Mr. Solomon and there was no record indicating that Mr. Pettiford's summons was served on him. Instead, the Court erroneously presumed that Mr. Pettiford knowingly and voluntarily waived his right to be present at his trial. See Exhibit 10. This was a clear error that violated Mr. Pettiford's constitutional due process rights.⁴

Moreover, even if the Court appropriately dismissed Mr. Pettiford's de novo appeal due to his absence on the scheduled date, Mr. Pettiford still has a due process right to be heard on the reason for his absence on that date. In Pinkney, 711 A.2d at 213-14, the Court of Appeals articulated:

[W]e conclude that the trial court has an obligation at a subsequent court proceeding to allow a criminal defendant the opportunity to explain the circumstances surrounding an absence at trial. To be sure, a modicum of uncertainty will often

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In addition to the federal Constitution, Maryland R. Ct. 4-231 also entitles defendants the right to be present at trial, and requires "knowing and intelligent" waiver of the right.

accompany a trial court's finding that a defendant has waived this right because the trial court will usually be required to find a negative: that an absent defendant is *not involuntarily* absent. Thus, when the defendant appears before the court at a later time, the judge must allow a defendant the opportunity to establish that the prior absence at trial was other than voluntary. If the defendant, through a motion for new trial or other appropriate objection, takes issue with the finding of waiver and presents evidence which, if known to the court initially, would have precluded a finding of waiver, then the trial judge must vacate any adverse verdict and grant the defendant a new trial.

In light of this precedent, it is critical that this Court now hear Mr. Pettiford's legitimate explanation -- the lack of notice -- for his absence from his de novo trial. Upon considering this lack of notice, the only appropriate choice this Court has is to reverse its judgement of dismissal and grant Mr. Pettiford's petition for writ of error coram nobis reinstating his de novo appeal.

II. MOTION TO REINSTATE DE NOVO APPEAL PURSUANT TO MARYLAND RULE OF COURT 7-112(f)(3)

A. A Motion to Reinstate De Novo Appeal Pursuant to Maryland Rule of Court 7-112(f)(3) is also a Proper Vehicle for Relief.

Mr. Pettiford also seeks relief through a motion to reinstate his de novo appeal pursuant to Md. R. Ct. 7-112(f)(3). This Rule, which is only applicable to de novo appeals, in relevant part, provides:

On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity.

This Rule is an appropriate remedy here. See Pollard v. State, 661 A.2d 734, 737 (Md. 1995) (holding that Rule 7-112(f)(3) is appropriate vehicle for challenging Circuit Court dismissal of a criminal de novo appeal). As discussed more fully below, Mr. Pettiford's appeal was dismissed due to irregularity created by the Court's failure to notify Mr. Pettiford of his de novo trial and by the Court's failure to establish that he knowingly and voluntarily waived his right to be present at the

trial.

B. The Circuit Court created "irregularity" by failing to notify Mr. Pettiford of his de novo trial and by failing to establish that he knowingly and voluntarily waived his right to be present at the trial.

Mr. Pettiford's motion to reinstate pursuant to Md. R. Ct. 7-112(f)(3) should be granted because the Circuit Court's dismissal of his de novo appeal was based upon "irregularity." Although "irregularity" has not been specifically defined by Maryland courts in the context of Md. R. Ct. 7-112(f)(3), it has been defined in the context of Md. R. Ct. 2-535 (revisory power of court in civil judgements)⁵ as the "failure to follow required process or procedure" or "the doing or not doing of that, in the conduct of a suit at law, which conformable to the practice of court, ought or ought not to be done." Weitz v. MacKenzie, 331 A.2d 291, 293 (Md. 1975). Consistent with this definition, Maryland courts have repeatedly held that a court's failure to provide adequate notice to the defendant of a hearing or ruling constitutes "irregularity." See Early v. Early, 659 A.2d 1334, 1340 (Md. 1995) (failure of court clerk to send parties a copy of an order as required by Md. R. Ct.1-324 resulted in irregularity); J.T. Masonry Co. v. Oxford Constr. Services, Inc., 539 A.2d 694, 700 (Md. Ct. Spec. App. 1988) (failure of court clerk to send counsel of party a notice of impending dismissal of a case for lack of prosecution was "irregularity"); Dypski v. Bethlehem Steel Corp., 539 A.2d 1165, 1167 (Md. Ct. Spec. App. 1988) (failure of clerk to send notice of order of dismissal for failure to prosecute civil action was "irregularity").

There is no reason why this interpretation of irregularity is not applicable here in the context of Md. R. Ct. 7-112(f)(3). Indeed, in Pollard, 661 A.2d at 737, the Court of Appeals of Maryland

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Md. R. Ct. 2-535(b) allows the court to revise a civil judgement at any time in the case of fraud, mistake, or irregularity.

specifically acknowledged that the failure of a clerk to send notice of a de novo trial date to a defendant constitutes irregularity even within the context of Md. R. Ct. 7-112(f)(3).

Similarly, the failure of the clerk to send notice of the scheduled de novo trial date to Mr. Pettiford or his counsel as ordered by the court and required by the Constitution and Maryland R. Ct. 1-324 constitutes "irregularity." However, not only was "irregularity" created here by the lack of notice, but also by the Court's failure to properly determine whether Mr. Pettiford's absence on the scheduled de novo trial date was knowing and voluntary.⁶ Accordingly, the "irregularity" in the court's procedures warrants the reinstatement of Mr. Pettiford's appeal pursuant to Md. R. Ct. 7-112(f)(3).

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In Stone, 685 A.2d at 445, the Court of Appeals of Maryland held that pursuant to Md. R. Ct. 7-112(d), when a defendant is absent at a de novo trial, "and there is nothing before the court to justify the defendant's absence, it is proper to presume that the defendant has withdrawn the appeal." However, the critical language is "when there is nothing before the court to justify the defendant's absence." Id. (emphasis added). This language makes clear that the presumption against the defendant is only appropriate when there is nothing on the record indicating that the absence is unknowing and involuntary. Id.

In the case at bar, this presumption is not applicable. The record speaks for itself. There is more than enough on the record to justify Mr. Pettiford's absence. As pointed out above, a simple examination of the record by the Court would have made it more than evident that Mr. Pettiford's attorney was not notified of the trial date even though he specifically made a written request for such notification. See Exhibit 3. This, in and of itself, provided justification for the defendant's absence. Further, the record failed to confirm that Mr. Pettiford was personally notified. Although there is a summons addressed to Mr. Pettiford in the court file, there is no evidence in the file to indicate that Mr. Pettiford was actually served with the summons. See Exhibit 8. On these facts, it is not correct to say that nothing was before the court justifying Mr. Pettiford's absence. Indeed, the record indicates the contrary.

CONCLUSION

For the foregoing reasons, Mr. Pettiford respectfully requests that this Court hold a hearing and grant this petition for writ of error coram nobis and motion to reinstate his de novo appeal.

Respectfully submitted,

ANTOINE PETTIFORD

IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY

ANTOINE PETTIFORD,
Petitioner

v.

STATE OF MARYLAND,
Respondent

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Civil Case No. _____

ORDER FOR A HEARING

The Court, having considered the foregoing Petition for writ of error coram nobis and motion to reinstate de novo appeal , it is this ___ day of July 2004,

ORDERED that a hearing in the above captioned case be scheduled by the Clerk's Office on _____, 2004.

JUDGE OF THE CIRCUIT COURT

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

v.

STATE OF MARYLAND,
Respondent

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Civil Case No. _____

**ORDER GRANTING PETITION FOR WRIT OR ERROR CORAM NOBIS AND
MOTION TO REINSTATE DE NOVO APPEAL**

The Court, having considered the foregoing Petition For Writ of Error Coram Nobis And Motion to Reinstate De Novo Appeal , it is this _____ day of _____ 2004,

ORDERED that Petitioner’s Petition For Writ of Error Coram Nobis and Motion to Reinstate De Novo Appeal are **GRANTED** and the judgment of dismissal of the de novo appeal by the Circuit Court for Baltimore City, in State of Maryland v. Antoine Pettiford, Case number 301249002, is hereby **VACATED**, and the de novo appeal is **REINSTATED**.

JUDGE OF THE CIRCUIT COURT

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on the _____ day of July 2004, a copy of the foregoing Petition for Writ of Error Coram Nobis and Motion to Reinstate De Novo Appeal and Request for Hearing was mailed, first-class postage prepaid to the Office of the State's Attorney for Baltimore City, 208 Clarence Mitchell, Jr., Courthouse, Baltimore, Maryland 21202.

ANTOINE PETTIFORD

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

v.

STATE OF MARYLAND,
Respondent

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Civil Case No. _____

PETITION OF INDIGENCE TO WAIVE FILING FEES FOR
PETITION FOR WRIT OF ERROR CORAM NOBIS AND MOTION TO REINSTATE
DE NOVO APPEAL

Petitioner Antoine Pettiford hereby moves this Honorable Court to waive any and all costs associated with the filing for Writ of Error Coram Nobis and Motion to Reinstate De Novo Appeal on this ___ day of July 2004. The reason for this request is that I am incarcerated at RCI Hagerstown, am indigent and unable to afford any filing fee or other costs.

ANTOINE PETTIFORD

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on the _____ day of July 2004, a copy of the foregoing Petition of Indigence to Waive Filing Fees for Petition for Writ of Error Coram Nobis and Motion to Reinstate de novo Appeal was mailed, first-class postage prepaid to the Office of the State's Attorney for Baltimore City, 208 Clarence Mitchell, Jr., Courthouse, Baltimore, Maryland 21202.

ANTOINE PETTIFORD