UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0812

September Term, 2014

DEWAYNE COLEMAN

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 28, 2015

In 2004, following a jury trial in the Circuit Court for Baltimore County, Dewayne Coleman, appellant, was found guilty of attempted voluntary manslaughter, first-degree assault, use of a handgun in the commission of a felony, and possession of a handgun. The court sentenced Coleman to ten years of imprisonment for attempted voluntary manslaughter and to a consecutive term of twenty years for use of a handgun in the commission of a felony. (The other convictions merged for sentencing purposes.) Coleman appealed and this Court, in an unreported opinion, affirmed. *Dewayne Eric Coleman v. State*, No. 158, September Term, 2006 (filed October 12, 2007).

In 2014, Coleman filed a *pro se* motion to correct an illegal sentence, which the circuit court denied. Coleman appealed and presents five questions for our consideration, which are reducible to one: Did the circuit court err in denying his motion?[1] For the reasons discussed below, we find no error in the court's ruling and, therefore, affirm.

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[1] Coleman phrased the questions presented as:

1. Did the sentencing court abuse its discretion by not crediting appellant the pre-trial credits/and to diminish those credits from the term of his sentence imposed on the record?

2. During the reading of appellant's name, indictment number and bill of particular counts, did the court clerk make suggestive statements to the jury foreperson within the meaning of *Ford v. State*, 12 Md. 514, 546 (1859)?

3. Did the trial court abuse its discretion by allowing the jury foreperson to only record her verdict as "guilty" without the ascertainment of including the charge of indictment and what particular degrees?

(continued…)

DISCUSSION

For various reasons, Coleman asserts that his sentence was illegal and, therefore, the circuit court erred in denying his motion to correct it. We consider his contentions in turn.

Credit for Time Served

Coleman first claims that he was entitled to "123 days of pre-trial credits" for the time he was incarcerated prior to trial. The commitment record, however, reflects that Coleman was "awarded 123 days credit for time served prior to and not including the date of sentence." Moreover, we have said that "an error" in calculating credit for time served does not "amount to an 'illegal sentence.'" *Howsare v. State*, 185 Md. App. 369, 398 (2009) (noting that the "proper remedy is to file a motion to correct the commitment record.").

The Jury's Verdict

In essence, Coleman's next complaint is that the jury's verdict was defective, and hence his sentence illegal, because of the manner in which the verdict was announced.

(…continued)

4. Did the trial court abuse its discretion by allowing the jury to only answer "yes" when the court clerk asked each and every juror was there an illegality to not concur in their own words on each particular count?

5. Did the sentencing court abuse its discretion during sentencing by not only admitting its confusion as to the correct counts, and to then fail to legally sentence the appellant to the correct counts?

When the jury returned to the courtroom following deliberations, the clerk inquired whether they had agreed upon a verdict. After receiving an affirmative response, the clerk continued:

THE CLERK:	Who shall say for you?
THE JURY:	The forelady.
THE CLERK:	Madam foreperson, please rise. Madam Foreperson, what say you in the case of State of Maryland versus DeWayne Coleman, Case Number 03-CR-2027, as to the first question of the verdict sheet, the first charge, attempted first degree murder, not guilty or guilty?
THE FOREPERSON:	Not guilty.
THE CLERK:	All right. We're going to go to Number 2 of the verdict sheet, attempted second degree murder, not guilty or guilty?
THE FOREPERSON:	Not guilty.
THE CLERK:	As to the third count on the verdict sheet, attempted voluntary manslaughter, not guilty or guilty?
THE FOREPERSON:	Guilty.
THE CLERK:	And as to the next charge on the verdict sheet, first degree assault, not guilty or guilty?
THE FOREPERSON:	Guilty.
THE CLERK:	As to the next charge on the verdict sheet, Question 5, use of a handgun during the commission of a crime of violence, not guilty or guilty?
THE FOREPERSON:	Guilty.

THE CLERK: As to Number 6 of the verdict sheet, possession of a handgun, not guilty or guilty?

THE FOREPERSON: Guilty.

The defense then requested a polling of the jury, and the clerk continued:

THE CLERK: Ladies and gentlemen of the jury, you have heard your verdict as your foreperson has recited it. Juror Number 1, is this your verdict?

THE JUROR: Yes.

THE CLERK: Juror Number 2, is this your verdict?

THE JUROR: Yes.

The clerk continued the polling in the same manner, that is, asking each juror, in turn, the question asked of Juror Numbers 1 and 2 and each successive juror responded "yes." Upon completion of the poll, the clerk then hearkened the verdict.

THE CLERK: Ladies and gentleman of the jury, harken to your verdict as the Court has recorded it. Your foreperson [sayeth] in the case of State of Maryland versus Dewayne Coleman, Case Number 03-CR-2027, that as to Number 1 of the verdict sheet, attempted first degree murder, you find the Defendant not guilty; as to Number 2 of the verdict sheet, attempted second degree murder, you find the Defendant not guilty; as to Number 3 of the verdict sheet, attempted voluntary manslaughter, you find the Defendant guilty; as to Number 4 of the verdict sheet, first degree assault, you find the Defendant guilty; Number 5 of the verdict sheet, use of a handgun during the commission of a crime of violence, you find the Defendant guilty; Number 6 of the verdict sheet, possession of a handgun, you find the Defendant guilty. And so say you all?

THE JURY: Yes.

As best we can discern from his brief, Coleman asserts that, by asking the foreperson whether the jury found the defendant "not guilty or guilty" of each count, the clerk "illegally suggest[ed]" the response. Moreover, he maintains that the foreperson should have pronounced the verdict in "her own words" and not merely given a response of "guilty" or "not guilty" to each count as read by the clerk. He makes the same contention with regard to the polling of the individual jurors, claiming that the "yes" response to the clerk's inquiry was insufficient. Accordingly, he contends that the verdict was "improper." We disagree.

In *Jones v. State*, 384 Md. 669 (2005), the Court of Appeals discussed the "historic procedures" or "protocol for the return of verdicts" following a jury trial in Maryland, summarizing it as follows:

> "When the jury have come to a unanimous determination with respect to their verdict, they return to the box to deliver it. The clerk then calls them over, by their names, and asks them whether they agree on this verdict, to which they reply in the affirmative. He then demands who shall say for them, to which they answer, their foreman. This being done, he desires the prisoner to hold up his right hand and addresses them: 'Look upon the prisoner at the bar; how say you, is he guilty of the matter whereof he indicted or not guilty?' **The foreman then answers guilty or not guilty, as the verdict may be.** The officer then writes the word 'guilty' or 'not guilty' as the verdict is, on the record and again addresses the jury: 'Hearken to your verdict as the court hath recorded it. You say that _____ is guilty (or not guilty) of the matter whereof he stands indicted, and so say you all.'"

Id. at 680-681 (quoting *Givens v. State*, 76 Md. 485, 487 (1893) (emphasis added)).

This is the same procedure the clerk followed in Coleman's case. After confirming that the jury had agreed upon a verdict and determining that the foreperson would speak for them, the clerk asked the foreperson whether Coleman was "not guilty or guilty" of each count and the foreperson responded with the jury's decision. Thus, there was nothing unusual or improper about the foreperson's announcement of the verdict in this case.

Nor do we perceive any problem with the polling. In *Strong v. State*, 261 Md. 371 (1971) (death sentence later vacated in *Strong v. Maryland*, 408 U.S. 939 (1972)), after the foreperson announced a verdict of guilty of murder in the first degree, the jury was polled. *Id.* at 373. In the polling, the clerk asked each juror the identical question: "Juror No. ___, you have heard the verdict as given by your Forelady. Is your verdict the same?" *Id.* Each juror, in turn, answered: "Yes" or "Yes it is." *Id.*

> On appeal, Strong, claimed that the murder verdict was defective because the individual jurors, when polled, did not state in their own words that they found the defendant "guilty of murder in the first degree." *Id.* The Court of Appeals disagreed, stating: The forelady said explicitly, with repetition, that the accused had committed first degree murder and, when each juror was asked individually whether his verdict was the same as that of the forelady, he replied in the affirmative. This was the equivalent of each juror saying: "I find the accused guilty of murder in the first degree" and we are entirely persuaded that each juror knowingly and intentionally so stated when he answered "yes" or "yes, it is" to the clerk's standard question.

Id. at 374.

Coleman's jury was polled in a like manner. In sum, we conclude that there was no defect in the jury's announcement of their verdict.

The Sentencing Hearing

Coleman's final contention is that the sentencing court, when imposing sentence, confused the counts. For example, immediately after imposing sentence for attempted voluntary manslaughter, the court sentenced Coleman for the use of a handgun in the commission of a felony and stated that the sentence for the handgun offense would run "consecutive to Count 1." The intent, clearly, was to run the handgun sentence consecutively to the sentence for attempted voluntary manslaughter. Coleman points out, however, that when the verdict was announced at trial, attempted voluntary manslaughter was described as "Count 3," not Count 1. He also points out that, at sentencing, the court merged the conviction for first-degree assault into "Count 1," but Count 1 was attempted first-degree murder, a crime he was acquitted of.

Although there may have been some confusion as to which offense was labeled with which count number, we are not persuaded that the sentences imposed were thereby rendered illegal. Prior to concluding the sentencing hearing, the court directed counsel to "work with" the clerk to "make sure we got these counts straight in the sentencing." The court noted that the verdict sheet numbered the offenses in an order different than the indictment, thus generating some temporary confusion at sentencing. But the court's imposition of sentence was clear: it merged the conviction for first-degree assault with the conviction for attempted voluntary manslaughter and merged the conviction for possession of a handgun with the conviction for use of a handgun; and it ordered the handgun sentence

to run consecutive to the sentence for attempted voluntary manslaughter. Nothing wrong occurred.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.