UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1766

September Term, 2012

JAMES GILES

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond, G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 11, 2016

In 2012, James Giles, appellant, filed, *pro se*, a motion to correct an illegal sentence, pursuant to Md. Rule 4-345, alleging that, in announcing the verdict at his trial, eleven of the twelve jurors failed to specifically state whether they had found him guilty of murder in the first or second degree and thereby rendered his conviction for first-degree murder a nullity and his sentence for that crime "illegal."[1] When the circuit court denied the motion, appellant noted this appeal, presenting two issues for our review. Rephrased to facilitate review, they are:

1. Whether appellant's sentence was illegal.

2. Whether the manner in which the jury rendered its verdict constituted an "irregularity" pursuant to Maryland Rule 4–345 (b).

Finding no error, we affirm.

BACKGROUND

On September 23, 1987, a jury, sitting in the Circuit Court for Baltimore City, convicted appellant of first-degree murder, armed robbery, and use of a handgun during a crime of violence. The transcript reflects that, when the jury delivered its verdict, the following verbal exchange occurred between the Clerk and the jury:

THE CLERK: Members of this jury, have you agreed upon a verdict?

THE JURY: Yes.

THE CLERK: Who shall say for you?

[1] Maryland Rule 4–345 provides, in relevant part, as follows:

> (a) Illegal sentence. The court may correct an illegal sentence at any time.
> (b) Fraud, Mistake, or Irregularity**.** The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

THE JURY: Our Forelady?

THE CLERK: Madam Forelady, please stand. In the State of Maryland v. James Antoine Giles, Indictment No. 18616206, murder of Stanley Kevin Dorsey, first count, guilty or not guilty of murder in the first degree or guilty of or not guilty of murder in the second degree?

THE FORELADY: Guilty of murder in the first degree.

Then, after the forelady announced the jury's verdict as to appellant's remaining charges, defense counsel requested that the jury be polled. That request resulted in the following exchange:

THE CLERK: Juror No. 2, please stand. You have heard the verdict of your forelady, is your verdict the same?

JUROR 2: Yes.

The clerk directed the same question to Juror Numbers 3 through 12 and each juror, in turn, responded, "yes." The clerk then hearkened the verdict:

THE CLERK: Hearken to your verdict as the Court has recorded it, you say that James A. Giles, as to Indictment No. 18616206, guilty of murder in the first degree. As to Indictment 18616207, guilty of armed robbery of Stanley Kevin Dorsey. As to Indictment 18616208, guilty of armed robbery of Richard Frierson. As to Indictment No. 18616209, guilty of armed robbery of Derrick Anthony. As to use of a handgun in the commission of crimes of violence, guilty, and so say you all?

THE JURY: Yes.

After making a few concluding remarks, the court dismissed the jury. Appellant was thereafter sentenced to life imprisonment for first-degree murder and to consecutive terms of twenty years' imprisonment for the crimes of robbery and use of a handgun respectively. When appellant appealed his judgments of conviction, this Court affirmed

those judgments in an unreported decision. *Giles v. State*, No. 1457, September Term, 1987 (filed July 19, 1988). Then, after the Court of Appeals denied appellant's petition for writ of certiorari and the circuit court his subsequent petition for post-conviction relief, he filed a motion to correct an illegal sentence. When that too was denied, he noted this appeal.

DISCUSSION

I.

Appellant first contends that, because eleven of the twelve members of the jury did not, specifically, utter the words "guilty of first-degree murder," his conviction for murder is a nullity and, consequently, his sentence was illegal. The State counters that appellant's life sentence was legal because the polling of the jury that occurred was the equivalent of each juror saying that he or she found him guilty of first-degree murder.

In 1809, the General Assembly enacted a statute dividing murder into first and second degrees and setting forth different potential terms of imprisonment for each offense. *See* Laws of Maryland, 1809, Chapter 138, Sections 3 and 4 (the "statute"). The statute also provided that "the jury before whom any person indicted for murder shall be tried, shall, if they find the person guilty thereof, ascertain in their verdict, whether it be murder in the first or second degree[.]" *Id*. at Sec. 3. At the time of appellant's trial, the statute had been slightly altered to read: "If a person is found guilty of murder, the court or jury that determined the person's guilt shall state in the verdict whether the person is

guilty of murder in the first degree or murder in the second degree." *See* Md. Code (1957; 1987 Repl.Vol.), Article 27 § 412(a).[2]

In challenging the validity of his murder conviction and life sentence, appellant relies on two Court of Appeals' decisions construing the foregoing statute: *Ford v. State,* 12 Md. 514 (1859) and *Williams v. State,* 60 Md. 402 (1883). In both of those cases, the Court of Appeals concluded that the jury's verdict was defective because, though the foreman announced the jury had found the accused guilty of murder in the first degree, when asked, upon polling, to state the verdict, each juror only stated "guilty" without mentioning the degree of murder. *Williams*, 60 Md. at 403-04; *Ford*, 12 Md. at 543-44, 549. In response, the State asserts, that *Ford* and *Williams* were modified by a subsequent decision of the Court of Appeals: *Strong v. State,* 261 Md. 371 (1971), *vacated on other grounds*, 408 U.S. 939 (1972).

Recently, addressing the interplay between *Ford*, *Williams*, and *Strong*, we stated in *McGhie v. State*:

> [*Ford and Williams*] make clear that, to support a first-degree murder conviction, the jury verdict must reflect that the jurors unanimously found the defendant guilty, not just of murder, but of murder in the first degree. The Court of Appeals subsequently made clear, however, that each juror need not utter those specific words. In *Strong,* the forelady announced the verdict as: "Guilty. Guilty of first degree murder, the first degree." During the subsequent polling, the individual jurors merely responded: "Yes," or "Yes, it is," when asked if their verdict was the same as the forelady's. On appeal, Strong argued, relying on *Williams,* that the murder verdict was

[2] The statute is presently codified as Md. Code (2012 Repl. Vol.) § 2–302 of the Criminal Law Article and provides: "When a court or jury finds a person guilty of murder, the court or jury shall state in the verdict whether the person is guilty of murder in the first degree or murder in the second degree."

> defective because the individual jurors did not mention the degree of murder. The Court of Appeals held that the verdict was valid, stating that the jurors' response to the polling question was "the equivalent of each juror saying: 'I find the accused guilty of murder in the first degree.'"

McGhie v. State, 225 Md. App. 453, 463 (2015), *cert. denied*, 446 Md. 292 (2016) (internal citations omitted).

Here, the forelady was asked whether the jury found appellant "guilty or not guilty of murder in the first degree or guilty or not guilty of murder in the second degree?" The forelady, speaking for the entire jury, responded "guilty of murder in the first degree." Then, the jury was polled and asked the same question as the jury in *Strong*, "[H]ave you heard the verdict of your forelady, is your verdict the same?" As in *Strong*, each juror responded in the affirmative. Further, in hearkening the verdict, the clerk asked the jury "as the Court has recorded it, you say that James A. Giles, as to Indictment No. 18616206, guilty of murder in the first degree . . . and so say you all." The jury responded in unison, "yes." This was all that was required, under the relevant statutory and decisional law, to reflect the jury's verdict in appellant's case.

Moreover, appellant's assertion that the clerk's use of the words "guilty of first degree murder," when asking the forelady to state the jury's verdict, was impermissibly suggestive is without merit. This claim is based on an excerpt from *Ford* that set forth the "questions presented" by appellant and did not reflect the opinion of the Court. *Ford*, 12 Md. at 534. Furthermore, as *Strong* makes clear, the test is whether the reviewing court is persuaded that each juror "knowingly and intentionally" indicated his or her agreement that the defendant was guilty of first degree murder. *Strong*, 261 Md. at 374.

The record reflects that they did. We therefore hold that the circuit court did not err in denying appellant's motion to correct an illegal sentence.

II.

Appellant also asserts the manner in which his verdict was returned and the jury polled constituted an "irregularity," warranting exercise of the trial court's revisory authority over his sentence pursuant to Maryland Rule 4–345(b). We disagree.

Unlike a motion to correct an illegal sentence, which can be filed at any time, a motion to revise a sentence to correct an irregularity must be filed within 90 days of the date of sentencing. *See* Md. Rule 4–345(e). Appellant's motion, filed over 24 years after he was sentenced, was therefore untimely. Moreover, in the context of Rule 4-345(b), an "irregularity" is "a failure to follow required process or procedure." *Radcliff v. Vance,* 360 Md. 277, 292 (2000) (citing *Early v. Early,* 338 Md. 639, 652 (1995)). As we have previously explained, however, there was no failure to follow the required process or procedure in the rendition of appellant's verdict or in the hearkening and the polling of the jury in this case. Accordingly, even assuming appellant's second claim was timely filed, he would not be entitled to relief.

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