

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1750

September Term, 2015

ALLEN GRIFFIN

v.

STATE OF MARYLAND

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Meredith, J.

Filed: January 18, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Allen Griffin, appellant, appeals the decision of the Circuit Court for Baltimore City denying his motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a). Appellant presents three questions on appeal, from which we distill one dispositive issue:¹

Did the court err in denying appellant’s motion to correct an illegal sentence?

In *Colvin v. State*, __ Md. ___, No. 8, Sept. Term 2016 (filed December 15, 2016), the Court of Appeals held that procedural errors such as those alleged by appellant are not reviewable pursuant to a motion to correct an illegal sentence based upon Rule 4-345(a). The Court of Appeals dismissed Colvin’s appeal, and we shall similarly dismiss Griffin’s appeal.

BACKGROUND

On September 4, 2001, at the conclusion of a joint trial of Griffin and a co-defendant, a Baltimore City jury convicted appellant of second-degree murder, attempted second-degree murder, use of a handgun in the commission of a crime of violence, and two

¹ Appellant’s wording of his questions presented is as follows:

1. Is the polling of juror #1 arbitrary under Md. [Rule] 4-327; if not, did the lower court err in not correcting the Appellant’s 75 year sentence when juror #1 was not polled?

2. Is a request for a polling of jury open to speculation for mandatory compliance under Md. [Rule] 4-327; if not, did the lower court err in not correcting the Appellant’s 75 year sentence when there was only one polling for two defendant[s] who both requested polling of the jury?

3. Did the calling of an incorrect case number during the open announcement of the verdict, and at the hearkening of the verdict meet the requirements [of] Md. [Rule] 4-327; if not, did the lower court err in not correcting the appellant’s 75 year sentence in the afore[]mentioned circumstances?

counts of wearing/carrying a handgun. The transcript reflects that after the jury indicated it had completed its deliberations, the following occurred with respect to receiving the verdict.

THE COURT: Good afternoon, ladies and gentlemen of the jury, be seated.

The last question is answered in the affirmative[:] You may put down Juror Number 1 as to [sic] foreperson and today's date. Any questions?

All right.

Let us proceed.

THE CLERK: Defendants, please stand.

Face the jury.

Members of the jury, have you agreed upon a verdict?

Who shall say for you?

Madam Forelady, please stand.

State of Maryland versus Allen Griffin, 10017005^[2], Question 1, how do you find the defendant on the charge that he did kill and murder Cedric White in the first degree or aided and abetted another to kill and murder Cedric White in the first degree, not guilty or guilty?

THE COURT: Before you answer, restate that number.

THE CLERK: 1.

THE COURT: Restate the number of the charging document.

THE CLERK: 10017005.

THE COURT: You're right. Go on, please.

THE CLERK: Guilty, not guilty?

² Appellant's case number, as recorded on his commitment record, was 100187005.

THE JUROR: Not guilty.

THE CLERK: Question 2, [How] do you find the defendant on the charge that he did kill and murder Cedric White in the second degree or aided and abetted another to kill and murder Cedric White in the second degree, not guilty or guilty?

THE JUROR: Guilty.

THE CLERK: Question 3, how [d]o you find the defendant on the charge that he did unlawfully use a handgun in the commission of a felony or crime of violence, not guilty or guilty?

THE JUROR: Guilty.

THE CLERK: Question 4, how do you find the defendant on the charge that he did wear, carry and transport a handgun, not guilty or guilty?

THE JUROR: Guilty.

THE CLERK: As to case 10017007^[3], Question 1, how do you find the defendant on the charge that he did attempt to kill and murder James Pal [sic] in the first degree or aided and abetted another in the attempt to kill and murder James Pal in the first degree, not guilty or guilty?

THE JUROR: Not guilty.

THE CLERK: Question 2, how do you find the defendant on the charge that he did attempt to kill and murder James Pal in the second degree or aided and abetted another in the attempt to kill and murder James Pal in the second degree, not guilty or guilty?

THE JUROR: Guilty.

THE CLERK: Question 3, how do you find the defendant on the charge that he did unlawfully assault James Pal in the first degree, not guilty, guilty?

THE JUROR: Not guilty.

³ Appellant's commitment record reflects that the case number was 100187007.

THE CLERK: How – Question 4: How do you find the defendant on the charge that he did wear, carry and transport a handgun, not guilty, guilty?

THE JUROR: Guilty.

THE CLERK: As [to] case 100213002, Question 1, how do you find the defendant on the charge that he did conspire with [co-defendant] to kill and murder Cedric White in the first degree, not guilty, guilty?

THE JUROR: Not guilty.

THE CLERK: Question 2, how do you find the defendant on the charge that he did conspire with [co-defendant] to kill and murder Cedric White in the second degree, not guilty, guilty?

THE JUROR: Not guilty.

After the jury announced its verdict as to appellant's co-defendant, the following occurred:

THE CLERK: Thank you. You may be seated.

Shall I poll the jury?

[APPELLANT'S COUNSEL]: Yes, Your Honor, on behalf of Mr. Griffin, I ask the jury be polled.

[CO-DEFENDANT'S COUNSEL]: I would join with that request, Your Honor.

THE CLERK: Defendants have to stand up.

State of Maryland versus [co-defendant] – h[e]arken to the verdict – you say you don't want a poll?

[APPELLANT'S COUNSEL]: We do.

THE CLERK: Juror Number 2, you've heard the verdict. Is your's [sic] the same?

THE JUROR: Yes.

The clerk asked the remaining jurors, with the exception of juror #1, who had just announced the verdict, the same question. The jurors all responded “Yes.” Then, the clerk hearkened the jury to its verdict as follows:

THE CLERK: H[e]arken to the verdict as the court has recorded it, State of Maryland versus [co-defendant]

* * *

State of Maryland versus Allen Griffin, 100187003^[4], Question 1. How do you find the defendant on the charge that he did kill and murder Cedric White in the first degree or aided and abetted another to kill and murder Cedric White in the first degree? Answer, not guilty.

Question 2: how do you find the defendant on the charge that he did kill and murder Cedric White in the second degree or aided and abetted another to kill and murder Cedric White in the second degree? Answer, guilty.

Question 3: how do you find the defendant on the charge that he did unlawfully use a handgun in the commission of a felony or crime of violence? Answer, guilty.

Question 4: How do you find the defendant on the charge that he did wear, carry and transport a handgun? Answer, guilty.

As to Case 10017007, Question 1, how do you find the defendant on the charge that he did attempt to kill and murder James Pal in the first degree or aided and abetted another in the attempt to kill and murder James Pal in the first degree? Answer, not guilty.

Question 2: how do you find the defendant on the charge that he did attempt to kill and murder James Pal in the second degree or aided and abetted another in the attempt to kill and murder James Pal in the second degree? Answer, guilty.

⁴ In this reading of the case number, the clerk remembered the “8,” but then changed the last digit.

Question 3, how do you find the defendant on the charge that he did unlawfully assault James Pal in the first degree? Answer, not guilty.

Question 4: how do you find the defendant on the charge that he did unlawfully assault James Pal in the second degree? Answer, not guilty.

Question 5: how do you find the defendant on the charge that he did wear, carry and transport a handgun? Answer, guilty.

As to case 10[0]113002, Question 1, How do you find the defendant on the charge that he did conspire with [co-defendant] to kill and murder Cedric White in the first degree? Answer, not guilty.

As to Question 2, how do find the defendant on the charge that he did conspire with [co-defendant] to kill and murder Cedric White in the second degree? Answer, not guilty.

And so say you all?^[5]

Thank you.

At no time did appellant’s counsel raise any objection, either during or after the proceedings when the jury announced its verdict, was polled, and was hearkened to its verdict. Furthermore, appellant did not file a motion for a new trial or complain about the rendering of the jury’s verdict, either during sentencing or on appeal. After the circuit court sentenced appellant, appellant noted a direct appeal to this Court, and we affirmed his convictions in an unreported decision, No. 2113, September Term 2001 (filed August 21, 2002). Appellant thereafter filed a petition for post-conviction relief, which was denied, and we subsequently denied appellant’s application for leave to appeal.

⁵ The transcript does not reflect an answer on the part of the jury. Appellant, however, does not contend that the jury was improperly hearkened on this basis. Rather, he maintains that the hearkening was improper because of the clerk’s announcement of the wrong case number.

Appellant filed the present motion pursuant to Rule 4-345(a) to correct an illegal sentence on August 17, 2015, and the circuit court denied the motion on September 8, 2015.

DISCUSSION

Appellant contends that his sentence was illegal because it was not based on a unanimous verdict, in violation of Rule 4-327(a). First, he alleges that the verdict was not unanimous because, during the polling of the jury, the clerk skipped over Juror # 1. Second, appellant maintains that the fact that the clerk polled the jury only once, but hearkened them twice, represents an error because of the joint nature of the trial. Finally, appellant argues that the clerk committed a fatal error in reading the incorrect case numbers when announcing the verdict and hearkening the jury. The State urges us to find no reversible error and affirm.

Maryland Rule 4-345(a) provides: “The court may correct an illegal sentence at any time.” We have observed that the rule ““creates a limited exception to the rule of finality, and sanctions a method of opening a judgment otherwise final and beyond the reach of the court.”” *Carlini v. State*, 215 Md. App. 415, 423 (2013) (emphasis omitted) (quoting *State v. Griffiths*, 338 Md. 485, 496 (1995)). A sentence is illegal and subject to review pursuant to Rule 4-345(a), however, only if ““the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed[.]”” *Britton v. State*, 201 Md. App. 589, 596 (2011) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). Accordingly, the Court of Appeals has recognized that “[t]he scope of this privilege,

allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow.” *Colvin, supra*, slip op. at 5 (quoting *Chaney, supra*, 397 Md. at 466).

In *Colvin*, the Court of Appeals noted that “[a] sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure.” *Id.* at slip op. 6 (quoting *Tshiwala v. State*, 424 Md. 612, 619 (2012)). Furthermore, “[a] motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.” *Id.* (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)).

Colvin, like appellant, argued that his sentence was illegal because it did not reflect a unanimous verdict due to the clerk’s failure to poll the jury foreperson. *Id.*, slip op. at 2-4. The Court of Appeals said that *Colvin* “argues, in essence, that an alleged flaw in the *procedure* by which the guilty verdict was received and finalized renders the sentence illegal. Not so.” *Id.*, slip op. at 8. The Court of Appeals rejected *Colvin*’s argument, and held that his claim of error was not cognizable as error under Rule 4-345(a). *Id.* The Court made it plain that a claim of error concerning an alleged procedural flaw in the polling procedure is insufficient to demonstrate that a sentence thereafter imposed was illegal within the ambit of Rule 4-345(a). *Id.*, slip op. at 8-9. The Court held: “Under Maryland law, procedural challenges to a verdict ought be done by contemporaneous objection and, if not corrected, presented through the direct appeal process. **Such claims do not come within the purview of Rule 4-345(a).**” *Id.*, slip op. at 9 (emphasis added).

As in *Colvin*’s case, the transcript in *Griffin*’s case provides no support for any challenge to the jury’s unanimity, which the *Colvin* Court described as “the lynchpin” to

any claim of illegality in the imposition of a sentence. “Without that lynchpin, the fragile structure of [appellant’s] allegation of an illegal sentence collapses of its own weight.” *Id.*, slip op. at 9.

The alleged errors of which appellant complains are all “procedural challenges to the verdict,” *Colvin, supra*, slip op. at 9, and are not cognizable under a Rule 4-345(a) motion to correct an illegal sentence.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.