

Circuit Court for Baltimore City
Case Nos: 106334001,02

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 762

September Term, 2019

DEMETRIES L. STURGIS

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 16, 2020

*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.

Demetries L. Sturgis, appellant, filed a motion to correct an illegal sentence in the Circuit Court for Baltimore City in which he asserted that his sentences to life imprisonment for first-degree murder and a consecutive term of 25 years for first-degree assault are illegal because the jury had not hearkened its verdict and the polling was defective because the jury foreperson was not included in the poll. By order filed on April 23, 2019, the circuit court denied relief, noting that it had rejected the same claim in an order dated February 3, 2015. Mr. Sturgis appeals that decision. We shall affirm because the verdict was valid and Mr. Sturgis’s sentences are legal.

The jury returned its verdict on June 25, 2007. The foreperson, Juror No. 1, announced the jury’s verdict on all counts before it. The defense requested a polling of the jury, and the clerk polled Juror Nos. 2 through 12 who each indicated their agreement with the verdict as announced by their foreperson. The clerk then hearkened the verdict. Although the transcript does not reflect the jury’s response to the hearkening, the trial judge thanked the jury for their service and excused them. No one, including the defense, voiced any concern that the jury had not given its assent to the hearkening.

On appeal, Mr. Sturgis appears to be attacking the unanimity of the jury’s verdict based on (1) the fact that the jury foreperson was not included in the poll, and (2) the transcript does not reflect the jury’s response to the hearkening. The State responds that Mr. Sturgis’s claim is not the proper subject of a Rule 4-345(a) motion and, in any event, is meritless. We agree with the State.

Although it is true that a jury’s verdict must be returned in open court and is not final until it is either polled or hearkened, the verdict here was both polled and hearkened.

The fact that the foreperson was not polled, after having just announced the verdicts, did not invalidate the poll. But even if the polling were to be deemed deficient, the verdict was harkened and there is no evidence before us that the jury did not assent to that harkening. *See Colvin v. State*, 450 Md. 718, 726-29 (2016) (holding that where a jury verdict was harkened, a claim that the jury was not properly polled because the foreperson was not included in the poll was not cognizable in a Rule 4-345(a) motion to correct an illegal sentence). Accordingly, we hold that the circuit court did not err in denying Mr. Sturgis’s motion to correct an illegal sentence.

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