

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 737

September Term, 2016

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LARRY MITCHELL SMOOT

v.

STATE OF MARYLAND

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Berger,  
Nazarian,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 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.

In 1991, Larry Mitchell Smoot was convicted, by a jury sitting in the Circuit Court for Charles County, of first-degree premeditated murder, robbery with a deadly weapon, and two counts of use of a handgun in the commission of a felony. He was sentenced to life in prison, without the possibility of parole, for first-degree murder, and an aggregate 60-year term for the three remaining convictions, to be served consecutive to the life sentence.<sup>1</sup> In 2015, Smoot filed a motion to correct an illegal sentence, which the circuit court denied in a written order dated May 31, 2016. Smoot now appeals from that order. For the following reasons, we shall affirm.<sup>2</sup>

Smoot seeks relief under Md. Rule 4-345(a), which provides that “[t]he court may correct an illegal sentence at any time.” An illegal sentence is defined as “one in which 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 and, for either reason, is intrinsically and substantively unlawful.’” *Colvin v. State*, 450 Md. 718, 725 (2016) (citation omitted). We

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<sup>1</sup> In 2001, pursuant to a petition for post-conviction relief filed by Smoot, the circuit court merged the two handgun convictions, thereby reducing the aggregate, consecutive term of incarceration to 40 years.

<sup>2</sup> The State has moved to dismiss the instant appeal on grounds that (1) Smoot’s claim is not cognizable on a motion to correct an illegal sentence, and (2) Smoot did not provide the transcript of the circuit court’s hearing on the motion for our review. We shall deny the motion to dismiss, as Smoot’s claim that the verdict was not orally announced in open court, on its face, is cognizable on a motion to correct an illegal sentence, *see Jones v. State*, 384 Md. 669 (2005), and because the issue on appeal can be resolved without reviewing the transcript of the hearing on the motion.

review the denial of a motion to correct an illegal sentence under a *de novo* standard of review. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Maryland Rule 4-327(a) provides that “[t]he verdict of a jury shall be unanimous and shall be returned in open court.” “[F]or a verdict to be considered final in a criminal case it must be announced orally to permit the defendant the opportunity to exercise the right to poll the jury to ensure the verdict’s unanimity.” *Jones v. State*, 384 Md. 669, 685 (2005). In the absence of an oral announcement, “[a] verdict of guilt cannot stand and any sentence apportioned thereto” is illegal and must be vacated. *Id.* at 686.

Relying on *Jones, supra*, Smoot contends that his sentence was illegal because, in his view, the record does not reflect that the verdict was orally announced in open court. We disagree.

Before the jury was excused to begin deliberations, the court instructed the jury on the procedure that would be followed when a verdict had been reached, stating:

[W]hen you have agreed upon a verdict, you notify the bailiff to that effect. The court will reconvene and the clerk will inquire as to whether a verdict has been reached. The foreman will answer, yes, and the clerk will ask the foreman to report the verdict. That would be done by handing in the verdict sheet and then the clerk will inquire as to it.

The jury’s verdict is reflected later in the transcript as follows:

(Whereupon, at 7:30 p.m., the jury returned to the courtroom and rendered the following verdict:)

1<sup>st</sup> Degree Premeditated Murder – “Guilty”.

Use of a Handgun in a Felony (Homicide) – “Guilty”.

Robbery with a Deadly Weapon – “Guilty”.

Use of a Handgun in a Felony – “Guilty”.

THE COURT: Stop there.

THE DEPUTY CLERK: Do you want me to hearken the jury?

[DEFENSE COUNSEL]: We ask the jury be polled.

THE COURT: Madam Clerk, you can poll the jury.

(Whereupon, the jury was duly polled, each juror answering, yes, to the question, Is the foreman’s verdict your verdict. The jury was duly hearkened to its verdict[.]

Although the announcement of the verdict was transcribed by the court reporter in a summary fashion, rather than word for word, it is apparent that, in accordance with the court’s stated procedure, the clerk inquired as to the jury’s verdict on each of the four counts, including the specific charge of first-degree premeditated murder, and that, as to each count, the jury foreman orally responded, “Guilty”. The jury was then polled, at the request of defense counsel, as to whether “the foreman’s verdict” was their verdict, and the jury unanimously agreed, after which the jury was hearkened to their verdict.

Moreover, as we recently stated, “[a] presumption of regularity attaches to criminal proceedings, which means that we ‘presume[ ] that the trial court proceedings were correct and the burden rests on the challenger to show otherwise.’” *Rich v. State*, 230 Md. App. 537, 554 (2016), *cert. granted*, 451 Md. 251 (2017) (citation omitted). We see nothing in the record, and Smoot has not pointed to anything, to rebut the presumption that the jury’s verdict was “orally announced in open court in order to permit the jury to be polled and hearkened to its verdict.” *Jones, supra*.

Smoot also asserts that the sentence was illegal because, he claims, the jury was not properly polled or hearkened. We decline to address those claims as they are not properly before us in this appeal from a motion to correct an illegal sentence. *Colvin*, 450 Md. at 728-29 (holding that alleged procedural errors in the taking of a verdict do not implicate the legality of the sentence, and thus are not cognizable under Rule 4-345(a)).<sup>3</sup>

**STATE’S MOTION TO DISMISS APPEAL  
DENIED. JUDGMENT OF THE CIRCUIT  
COURT FOR CHARLES COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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<sup>3</sup> We also decline to address, within the context of this appeal from the denial of a motion to correct an illegal sentence, Smoot’s claim that the circuit court abused its discretion in considering an untimely filing, by the State, of a memorandum in support of its opposition to Smoot’s motion to correct an illegal sentence. Even if we were to find merit in such a claim, it would not render Smoot’s sentence illegal within the meaning of Rule 4-345(a).