

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2505

September Term, 2015

DARNELL SEWELL

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 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.

Following a jury trial, in the Circuit Court for Baltimore City, in 2013, Darnell Sewell, appellant, was convicted of six counts of attempted murder, two counts of possession of a regulated firearm, and one count of reckless endangerment. Sewell was subsequently sentenced to a total term of life imprisonment, with all but 60 years suspended. Two years later, Sewell filed a motion to correct an illegal sentence, claiming that the jury was improperly polled, thereby rendering his convictions invalid and his sentences illegal. The circuit court denied that motion without a hearing. In this appeal, Sewell claims that the circuit court erred both in denying his motion, on the merits, and without a hearing. Finding no error, we affirm.

Sewell claims that the jury was improperly polled because, after the foreperson announced the verdict, the clerk merely asked the remaining jurors whether their verdict was “the same,” to which each juror responded in the affirmative.¹ Sewell claims that the clerk’s question was insufficient to ensure that each juror’s verdict was “the same as the foreperson’s.” Sewell also notes that the foreperson, when polled, did not declare him “guilty” or “not guilty,” which Sewell claims was required. Based on these alleged procedural flaws, and despite the fact that the verdict was immediately hearkened following the polling, Sewell claims that the jury’s verdict was not unanimous.

As the Court of Appeals recently explained in *Colvin v. State*, __ Md. __, 2016 WL 7242736 (filed December 15, 2016), a case in which the defendant challenged the legality

¹ Sewell’s argument attacks the validity of each of the jury’s guilty verdicts and the legality of his sentences. For the sake of simplicity, we are using the singular “verdict” to refer collectively to those verdicts and sentences. *Colvin v. State*, __ Md. __, 2016 WL 7242736, 4 n. 2 (filed December 15, 2016).

of a sentence based solely on the fact the jury foreperson was not polled, “[a]n illegal sentence, for purposes of Rule 4-345(a), is 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.’” *Id.* (internal citations omitted). On the other hand, procedural challenges to the polling process, like those raised by Colvin (and by Sewell in the instant case), “ought to 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.*

Moreover, even if the alleged procedural flaws did occur, such flaws did not automatically implicate the jury’s unanimity because the verdict was hearkened. As the Court of Appeals explained in *Colvin*, “that the record does not reflect...a properly conducted polling process...does not make a substantive allegation of a lack of juror unanimity without more: the additional lack of a proper hearkening of the jury to the verdict.” *Id.* In other words, when the polling process is challenged, “[t]he alleged lack of unanimity of the verdict is the lynchpin of [the] argument that the verdict, as rendered, is unconstitutional and therefore a ‘nullity’ upon which no legal sentence can be imposed. Without that lynchpin, the fragile structure of [the] allegation of an illegal sentence collapses of its own weight.” *Id.* Thus, in light of the fact that the jury unanimously assented to the verdict as hearkened, Sewell’s sentences were legal, and the circuit court did not err in denying his motion to correct an illegal sentence.

Finally, Sewell incorrectly claims that the circuit court was required to hold a hearing prior to denying his motion to correct an illegal sentence. Maryland Rule 4-345 only requires a hearing if the court modifies, reduces, corrects, or vacates a sentence. Md. Rule 4-345(f). No such hearing is required when a court denies a motion to correct an illegal sentence. *Id.*

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