

Circuit Court for Baltimore City
Case No.: 110307001

UNREPORTED

IN THE APPELLATE COURT
OF MARYLAND*

No. 2125

September Term, 2024

DARIUS ANTOWAN SHEPPARD

v.

STATE OF MARYLAND

Wells, C.J.,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 10, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2013, a jury in the Circuit Court for Baltimore City found appellant, Darius Sheppard, guilty of first-degree murder, use of a handgun in the commission of a crime of violence, and illegal possession of a handgun. The court sentenced him to a total term of life imprisonment, plus 25 years. On direct appeal, this Court affirmed the judgments. *Sheppard v. State*, No. 409, September Term, 2014 (filed unreported May 7, 2015), *cert. denied*, 445 Md. 7 (2015). A decade later, Mr. Sheppard filed a petition for post-conviction relief and a motion to correct an illegal sentence. Among other things, Mr. Sheppard alleged that the verdict rendered in his case was not unanimous and that his trial counsel provided ineffective assistance of counsel in failing to challenge the entry of the alleged non-unanimous verdict and the trial court’s polling procedure. Following a hearing on both the post-conviction petition and the illegal sentence motion, the circuit court denied the ineffective assistance of counsel claims and the motion to correct an illegal sentence. This Court denied Mr. Sheppard’s application for leave to appeal from the post-conviction decision. *Sheppard v. State*, No. 2150, September Term 2024 (filed unreported March 27, 2025). His appeal of the illegal sentence ruling, a direct appeal by right, is the issue presently before us. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

The Jury’s Verdict

After the trial court was advised that the jury had reached a verdict, the jurors returned to the courtroom and the transcript reflects that the following transpired:

THE CLERK: Thank you, Your Honor. Members of the jury, have you agreed upon a verdict?

JURORS: Yes.

THE CLERK: Thank you. Who shall speak for you?

JUROR: Our foreperson.

THE CLERK: Would the foreperson please stand? And, Defense, thanks for standing. State of Maryland versus Darius Sheppard, case number 110307001 in the Circuit Court for Baltimore City, as to count one, do you find the defendant Darius Sheppard did murder Arthur Peacock in the first degree; not guilty or guilty?

JUROR: Guilty.

THE CLERK: As to count three, do you find the defendant Darius Sheppard used a handgun in the commission of a felony or crime of violence; not guilty or guilty?

JUROR: Guilty.

THE CLERK: Count four, do you find the defendant Darius Sheppard possessed a handgun after being convicted of an offense that prohibits him from possession of a handgun; not guilty or guilty?

JUROR: Guilty.

THE CLERK: Thank you. **You may be seated. Counsel, would you like a polling of the jury?**

[DEFENSE COUNSEL]: Yes, please, thank you.

THE CLERK: **Madame foreperson, is that your verdict?**

JUROR: No.

THE COURT: I'm sorry. **Madame foreperson, when the defendant requests that the defendant has -- the defendant has a right in every case to have the jury polled, each juror is then asked going down separately, individually, is that indeed your verdict, meaning your verdict of all of you. So we'll begin with juror number one and proceed through jurors one, two, three, four, five, six, seven, eight, nine, ten and 11, 12. Again.**

JUROR: (Inaudible).

THE COURT: The jury's verdict as you were instructed, is to be a unanimous verdict after your deliberations. So now each of you is asked, is that indeed your verdict as part of the unanimous verdict.

JUROR: Yes, sir.

THE COURT: Okay. I'm going to ask madame clerk to please ask the question of each juror. Thank you.

THE CLERK: Thank you, Your Honor.

THE COURT: Now that you understand.

THE CLERK: Thank you, Your Honor.

[THE PROSECUTOR]: Thank you.

THE CLERK: Madame foreperson, is that your verdict?

JUROR: Yes.

THE CLERK: Thank you. Juror number two, you've heard the verdict of your foreperson, is your verdict the same?

JUROR: Yes.

(Emphasis added.)

Each remaining juror, individually, also confirmed upon polling that the verdict as announced by the foreperson was his or her verdict. The clerk then hearkened the verdict, and the jurors responded in the affirmative to the hearkening. Immediately thereafter, the court thanked the jurors for their service and alerted them to the fact that the “lawyers in the case may wish to speak with you before you leave[,]” but advised them that they were “under no obligation to do so[.]” The court then discharged the jury.

The record before us does not reflect any post-trial motions related to the jury’s verdict and the issues raised on direct appeal did not concern the jury’s verdict.

Motion To Correct An Illegal Sentence

It appears that Mr. Sheppard first raised an issue regarding the alleged lack of unanimity in the jury’s verdict in 2024, when he filed a petition for post-conviction relief and a Rule 4-345(a) motion to correct an illegal sentence. Both the petition and motion, which were heard together, raised essentially the same claim as to the unanimity of the verdict. In addition to the transcript of the jury’s announcement of its verdict, the parties and the circuit court had the benefit of a video and audio recording of the same. Pursuant to an order entered on December 6, 2024, the court denied the Rule 4-345(a) motion “having found for reasons set forth in the Memorandum Opinion on the Petition for Post Conviction Relief, dated December 6, 2024, that there is no merit to [Mr. Sheppard’s] claim that his sentence is illegal based upon a defective verdict[.]”¹

In its opinion, the court, when setting forth what transpired when the polling of the jury commenced—and having the benefit of the video and audio recording—noted:

THE CLERK: Madame foreperson, is that your verdict?

JUROR: [Umm . . .] No.

In a footnote, the court stated that “[t]he transcript omits the foreperson’s clear initial response of “umm,” and then a pause before she says, “No.” The post-conviction judge also summarized what it viewed and heard (and the parties do not dispute) on the courtroom’s recording of the proceeding:

Nearly instantaneous with the foreperson’s initial response of “[u]mm . . . No”, the courtroom camera captured [defense counsel’s] eyes widen; she

¹ As noted, the post-conviction court also found no merit to the alleged ineffective assistance of counsel claims.

arose to her feet, braced herself against the trial table, and looked directly at [the trial judge] clearly indicating an intention to address the court. However, the [trial judge] interjected before she had an opportunity to speak. When the camera again returned to [defense counsel] during the hearkening of the verdict, she is seen sitting calmly at trial table next to Mr. Sheppard with her hands grasped in front of her. The issue of the foreperson’s initial response during the polling was not again addressed by the court or by [defense counsel], and [defense counsel] raised no objection either to the verdict or to [the trial judge’s] actions taken in response to the foreperson’s initial response during polling.

With respect to the foreperson’s “inaudible” response made after [the trial judge’s] explanation of the polling process, . . . upon careful and repeated reviews of the audio, this court is unable to decipher anything said in this instance by the foreperson. No evidence, testimonial or otherwise, was offered during the post conviction hearing in an effort to clarify the “inaudible” response; indeed, Mr. Sheppard testified that on December 2, 2013, he did not hear what the foreperson said in that instance. Mr. Sheppard conceded through counsel during the hearing that the segment is, in fact, inaudible.

After reviewing the relevant law pertaining to unanimous verdicts, the court addressed the claim of sentence illegality.

Here, there was clear ambiguity in the foreperson’s initial response of “umm . . . No”, during polling. To that point, the foreperson had announced the three verdicts of guilty, the defense had requested “polling of the jury,” and the courtroom clerk has simply asked, “Madam foreperson, is that your verdict?”, in reference to the verdict that the foreperson had just announced. No explanation as to what polling was or how it would be conducted had been given to the jurors. From [the trial judge’s] initial response—to explain the purpose of polling and the polling process—it appears most likely that he concluded from the foreperson’s initial response that she misunderstood the clerk’s question. This is further indicated by [the trial judge’s] statement to the foreperson of, “Now that you understand,” made after his explanation of polling and the foreperson’s inaudible response thereto. Moreover, [defense counsel’s] reactions were telling: she responded instantaneously and in a determined manner upon hearing the foreperson’s initial response, but had no audible or visible reaction following either [the trial judge’s] explanation of polling, the foreperson’s inaudible response thereto, or completion of the polling and hearkening. This indicates that [defense counsel] was, in the moment, satisfied that the foreperson had simply misunderstood the initial

question, and, upon hearing [the trial judge’s] explanation, the foreperson’s misunderstanding was corrected. There is no evidence to the contrary.

After making those findings, the post-conviction court turned to Mr. Sheppard’s arguments in support of the sentence illegality claim and the alleged ineffectiveness of trial counsel as it related to the polling process.

Mr. Sheppard argues that the trial court’s attempts to clarify the ambiguous “umm . . . No” response from the foreperson were improperly coercive. He contends that [the trial judge], in response, incorrectly explained the polling process by stating that: (1) each juror would be individually asked whether the announce[d] jury verdict was “indeed your verdict, meaning your verdict of all of you[;]” (2) the “jury’s verdict as you were instructed, is to be a unanimous verdict after your deliberations[;]” and (3) each juror would be asked if the verdict was “indeed your verdict as part of the unanimous verdict.” While [the trial court’s] explanation of the polling process could have been more precise, the risk of coercion here was slight because, as this court has found, the foreperson’s “umm . . . No” was not an expression of disagreement with the announced verdict; rather, it was a reflection of the foreperson’s misunderstanding of the polling question. Once the question was clarified and she “understood” what she was being asked, as observed by [the trial judge], the foreperson answered clearly and definitively in the affirmative as to whether the announced verdict was indeed her individual verdict.

For these reasons, each of Mr. Sheppard’s claims for post-conviction relief predicated upon what transpired during the polling process lack merit. Mr. Sheppard fails to establish that he was not afforded his Sixth Amendment right to a unanimous verdict or that [defense counsel] somehow provided ineffective assistance by not objecting to the verdict or challenging [the trial judge’s] efforts to seek clarity in the foreperson’s initial response during polling.

DISCUSSION

Illegal Sentences

Rule 4-345(a) provides that a court “may correct an illegal sentence at any time[,]” but the Rule is very narrow in scope and is “limited to those situations in which the illegality inheres in the sentence itself[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there “has been no conviction warranting any sentence for the particular offense[,]” *id.*; where “the sentence is not a permitted one for the conviction upon which it was imposed[,]” *id.*; where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012); or where the court “lacked the power or authority” to impose the sentence. *Johnson v. State*, 427 Md. 356, 370 (2012). However, 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.”” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). In other words, “only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion.” *Id.* at 728.

Appellate court review of the circuit court’s ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020). In addition, “[w]hether a verdict satisfies the unanimous consent requirement,” is ambiguous, or was coerced, is “a mixed question of law and fact, which we review *de novo*, considering the totality of the circumstances.” *Caldwell v. State*, 164 Md. App. 612, 643 (2005) (citations omitted).

The Parties’ Contentions

As he did in the circuit court, Mr. Sheppard asserts that his sentence is inherently illegal because the verdict was defective given the foreperson’s initial response of “no” when asked, upon polling, whether the verdict as announced was her verdict. He maintains that the trial judge erred after that response was given by failing to direct the jury to deliberate further or by questioning the jury, in a noncoercive manner, in an attempt to clarify the ambiguous response. He asserts that the trial court erred further “when it singled out and compelled an answer from the holdout juror.” In addition, he claims that the court compounded its error by erroneously informing the “holdout juror” that “her answer at polling should reflect the group consensus, *not* her personal opinion.” In other words, Mr. Sheppard maintains that the court’s explanation of the polling process “erroneously indicated to the juror that she did not have the right to dissent to the verdict.” Finally, he alleges that the trial judge “made it clear that it considered the holdout juror’s answer incorrect, and pressured the holdout juror to change her answer upon re-polling.”

The State maintains that (1) Mr. Sheppard’s claim is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence and (2) under “the circumstances” of this case fails on the merits. According to the State, “[t]he trial court appropriately clarified any ambiguity in the jury’s verdict, and there was, therefore, no defect in the verdict.”

Analysis

In *Caldwell*, this Court emphasized that “to satisfy the unanimous consent requirement, a verdict must be unambiguous and unconditional and must be final—in the sense of not being provisional or tentative and, to the contrary, being intended as the last

resolution of the issue and not subject to change in further deliberation.” 164 Md. App. at 642-43. Accordingly, “[a] verdict that is tentative, not being by unanimous consent, is defective and not valid.” *Id.* at 643. Thus, we instructed that, when accepting a verdict, “a trial judge must guard against the danger of transforming a provisional decision into a final verdict.” *Id.* When the circumstances raise the question of lack of finality or it appears that the verdict is ambiguous, the court should not accept the verdict but instead “take corrective action, either by returning the jury to its room for further deliberations or by noncoercively attempting to clarify a juror’s ambiguous response through questions.” *Id.* at 635 (citations omitted).

Here, the foreperson’s initial response to the clerk’s polling question certainly raised a question regarding the unanimity of the verdict. But we agree with the post-conviction court that the concern was addressed by the trial judge and was based on what appeared to be a misunderstanding, on the part of the foreperson, of the polling process. We disagree with Mr. Sheppard’s characterization of the trial judge’s response to the initial “no” (or “Umm . . . no”) to be coercion to compel a “holdout juror” to respond in the affirmative. When the clerk re-asked the question after the trial judge explained the polling process, the foreperson clearly responded “Yes” when asked if the verdict announced was “your verdict.” The jury, as a whole, also responded affirmatively to the hearkening.

Finally, as the post-conviction court did, upon reviewing the audio/visual recording of the jury’s announcement of its verdicts, we find compelling defense counsel’s reactions as aptly summarized by the post-conviction court. Moreover, the recording reflects that,

after the jury was discharged, the court discussed with counsel a sentencing date and when it inquired if there was anything else that counsel wished to raise, the answer was no.

In short, under the circumstances of this case, we are not persuaded that the verdict was anything but unanimous.

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