Circuit Court for Prince George's County
Case No. CT-90-0879B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2457

September Term, 2016

ROLAND HAYES JETER, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: December 13, 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.

On November 1, 1990, a jury sitting in the Circuit Court for Prince George's County convicted Roland Hayes Jeter-El,[1] Jr. of five counts, Count 3 of which was attempted robbery with a deadly weapon. We affirmed his convictions and sentences on direct appeal. He later filed a motion to correct an illegal sentence, in which he argued that procedural errors relating to the taking of the verdict on Count 3 rendered his sentence on that count illegal. The circuit court disagreed and we affirm, although for slightly different reasons.

I. BACKGROUND

The victim in this case worked as the manager of a pizza restaurant. His shift had ended on the night of April 7, 1990, but the restaurant was busy, so he decided to deliver a pizza on his way home. His girlfriend picked him up from work and they drove to a home in Largo to make the delivery. The girlfriend waited in the car, then saw the victim running toward her, bleeding, before he collapsed in the street. He died of a gunshot wound to the chest.

Mr. Jeter-El and another man, Arthur Miles, were arrested two days after the shooting. Mr. Jeter-El admitted to police that he and Mr. Miles had formed a plan to rob a pizza delivery person. He called the restaurant and gave the dispatcher the address of a vacant house, then armed himself with a toy gun while Mr. Miles armed himself with a real one. The men went to the vacant house and waited.

[1] The case is captioned as stated on the Court's docketing letter, dated March 22, 2017. But in the record, Mr. Jeter-El indicated that he prefers Jeter-El, so we will refer to him that way.

When the victim arrived, Mr. Miles invited him inside. The victim declined, though, and told the men the price of the pizza. Messrs. Miles and Jeter-El closed the door, conferred, and decided to rob the victim anyway. Mr. Miles opened the door again and saw that the victim had begun to return to the car. He called the victim back to the house and the victim returned, and as the victim approached the door, Mr. Miles shot him in the chest. Both men ran out of the house without taking any property from the victim. Mr. Jeter-El denied that the shooting was part of the robbery plan, and contended that Mr. Miles told him it was an accident.

On November 1, 1990 after a jury trial, Mr. Jeter-El was convicted of second-degree murder, attempted robbery with a deadly weapon (Count 3), conspiracy to commit robbery with a deadly weapon, and two counts of use of a handgun in the commission of a felony or crime of violence. The portion of the trial relevant to this appeal came at the end, when the jury informed the court that it had reached a verdict:

> THE COURT: All right. Take the verdict.
>
> THE CLERK: Ladies and gentlemen of the jury, are you agreed of your verdict?
>
> THE JURY: Yes.
>
> THE CLERK: Who shall say for you?
>
> THE JURY: Our Foreman.
>
> THE CLERK: Madam Foreman, what say you in Criminal Trial 90-0879B, State of Maryland versus Roland Hayes Jeter, Jr., as to count one, homicide, do you find the defendant guilty or not guilty of murder in the first degree?

THE FOREMAN: Not guilty.

THE CLERK: Do you find the defendant guilty or not guilty of murder in the first degree, felony murder?

THE FOREMAN: Not guilty.

THE CLERK: Do you find the defendant guilty or not guilty of murder in the second degree?

THE FOREMAN: Guilty.

THE CLERK: As to count two, do you find the defendant guilty or not guilty of use of a handgun in the commission of a felony?

THE FOREMAN: Guilty.

THE CLERK: As to count four, do you find the defendant guilty or not guilty of the use of a handgun in the commission of a crime of violence?

THE FOREMAN: Guilty.

THE CLERK: As to count five, do you find the defendant guilty or not guilty of conspiracy to [commit] robbery with a deadly weapon?

THE FOREMAN: Guilty.

[DEFENSE COUNSEL]: May we have a poll, sir? (The jury was polled and found to be unanimous.)[2]

THE CLERK: Ladies and Gentlemen of the jury, hearken to your verdict as the court hath recorded it.

As to CT 90-0879B, State of Maryland versus Roland Hayes Jeter, Jr., count one, homicide, murder in the first degree, premeditated, not guilty; felony murder, not guilty; murder in the second degree, guilty.

[2] The actual polling was not transcribed.

> As to count two, use of a handgun in the commission of a felony, guilty.
>
> As to count three, attempted robbery with a deadly weapon, guilty.
>
> As to count four, the use of a handgun in the commission of a crime of violence, guilty.
>
> As to count five, conspiracy to robbery with a deadly weapon, guilty, in the matters alleged against him, and so say you all?
>
> THE JURY: Yes.

The defense did not object during or after the announcement, polling, or hearkening.

Mr. Jeter-El appealed. Among other things, he argued on direct appeal that the jury's verdict on Count 3, attempted robbery with a deadly weapon, was ambiguous, and therefore defective. We affirmed. *Jeter v. State*, No. 1980, Sept. Term 1990 (Md. App. Oct. 28, 1991).

In 2016, he filed a motion to correct an illegal sentence, in which he argued again that ambiguities in the jury's verdict on Count 3 render the sentence illegal. The circuit court denied the motion after a hearing on January 6, 2017, and Mr. Jeter-El filed a timely notice of appeal.

II. DISCUSSION

Mr. Jeter-El contends on appeal that the jury's verdict on Count 3, attempted robbery with a deadly weapon, was ambiguous because the clerk or foreman skipped over that count as they announced the verdict. Although the jury was polled, the polling was not transcribed, which, he argues, leaves no confidence that the jury in fact found him guilty

on that count. These errors were not cured by hearkening, he says, and they render his sentence on Count 3 illegal. The State counters that we already rejected these claims on direct appeal, that the verdict was properly returned, and, in any event, that Mr. Jeter-El waived these arguments when his counsel failed to object as the verdict came in.

Before reaching any of these points, though, Mr. Jeter-El confronts an insurmountable problem: a motion to correct an illegal sentence under Maryland Rule 4-345(a) is not the appropriate vehicle to address the defects he identifies with the jury verdict here. Rule 4-345(a) provides that a court may "correct an illegal sentence at any time." But an "illegal sentence" for purposes of the Rule 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.'" *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). Mr. Jeter-El does not, and cannot, claim that the sentence he received for attempted robbery with a deadly weapon[3] exceeded the statutory maximum or is otherwise substantively illegal. The illegality arises, he says, from the ambiguity created when the clerk and jury apparently skipped over Count 3 when they announced the verdict and the fact that the

[3] He was sentenced on Count 3 to twenty years, to run consecutively to his sentences for second-degree murder (thirty years) and use of a handgun in the commission of a crime of violence (twenty years), and concurrently with his sentence for conspiracy to commit attempted robbery (twenty years). His sentence for use of a handgun in the commission of a felony was merged into his sentence for use of a handgun in the commission of a crime of violence.

polling wasn't transcribed. We review this legal question *de novo*. *Carlini v. State*, 215 Md. App. 415, 425–26 (2013).

Assuming, for the purposes of this paragraph, that Mr. Jeter-El identified a defect in his sentence, the flaw is procedural, and not cognizable under Rule 4-345(a). Indeed, we find this case indistinguishable from *Colvin*. In that case, the foreperson announced the verdict, and when the jury was polled, the foreperson was not asked individually to (re-) state her verdict. There, as here, the defense lodged no objection to the announcement, polling or hearkening. Instead, as here, the defendant filed a motion to correct an illegal sentence, in which he contended that the verdict was a nullity because the polling did not reveal unanimous agreement among the jurors. *Colvin*, 450 Md. at 724. The circuit court denied the motion; in a 2-1 decision, this Court reversed. But after granting *certiorari*, the Court of Appeals reversed again. After noting that all twelve jurors were hearkened to the verdict and agreed to it as announced by the foreperson, *id*. at 727, the Court held that the alleged defects were procedural, not substantive, and thus couldn't render the ensuing sentence illegal for purposes of Rule 4-345(a):

> The most that can be said of Colvin's alleged claim is that the record does not reflect, at least as Colvin would argue, a properly conducted polling process. Yet, that allegation, even if true, 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. The alleged lack of unanimity of the verdict is the lynchpin of Colvin's 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 Colvin's allegation of an illegal sentence collapses of its own weight.

> Under Maryland law, procedural challenges to a verdict ought to be done by contemporaneous objection and, if not corrected, corrected through the direct appeal process. Such claims do not come within the purview of Rule 4-345(a). Because Colvin's claim does not implicate the legality of the sentence, it is not cognizable under the Rule.

Id. at 728.

Here, Mr. Jeter-El challenges the process by which the verdict was announced. But as in *Colvin*, the jury was polled and the verdict hearkened, and no objection was lodged at any point. The poll may not have been transcribed, but there is no dispute that it happened, and the jury hearkened to the verdict, as to all five counts, immediately after the poll. The defect in this process, if any, was purely procedural, and in light of *Colvin*, cannot be cured by way of a motion to correct an illegal sentence. For that reason alone, then, we would affirm the circuit court's decision to deny the motion.

But even if somehow we could reach Mr. Jeter-El's claims, we wouldn't reverse for two additional reasons. *First*, we addressed these same arguments in Mr. Jeter-El's direct appeal, and the law of the case doctrine "prevent[s] relitigation of an 'illegal sentence' argument that has been presented to and rejected by an appellate court." *State v. Garnett*, 172 Md. App. 558, 562 (2007); *see also Haskins v. State*, 171 Md. App. 182, 189 (2006) (a previous appellate panel's decision generally controls a second appeal at the same level). As here, he cited on direct appeal the disconnect between the jury's failure to announce a verdict on Count 3 and the verdict to which it hearkened and contended that the ambiguous verdict couldn't stand—exactly the challenge he seeks to raise here—and we rejected it. *See Jeter v. State*, No. 1980, Sept. Term 1990, slip op. at 5–6 (Md. App. Oct. 28, 1991).

Second, we rejected his jury defect arguments on direct appeal because they weren't preserved for appellate review. The defense never objected or raised any concerns about the announcement of the verdict, thus affording the trial court no opportunity to correct the defects. Appellate courts don't consider issues that were not first raised in and considered by trial courts, Md. Rule 8-131(c), and even if these procedural defects with the taking of the verdict could be raised in a motion to correct an illegal sentence, they would not properly be before us on this record.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELANT TO PAY COSTS.