

Circuit Court for Baltimore City
Case No: 18910107

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1381

September Term, 2020

HENRY BARKSDALE

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2021

*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 1989, a jury sitting in the Circuit Court for Baltimore City found Henry Barksdale, appellant, guilty of first-degree murder and use of a handgun in the commission of a crime of violence. The court sentenced him to life imprisonment for the murder and a consecutively run term of 10 years for the handgun offense. On direct appeal, this Court affirmed the judgments. *Barksdale v. State*, No. 1749, September Term, 1989 (filed June 27, 1990). Mr. Barksdale has challenged his convictions and sentences in various petitions or motions filed throughout the years, to no avail.

In 2020, the self-represented Mr. Barksdale filed a motion for new trial pursuant to Maryland Rule 4-331(b). We quote the grounds raised in support of his motion:

- 1.) Unlawful judgment of Conviction by Jury’s Verdict for unlawful use of a handgun in the commission of a crime of violence; [citations to transcript omitted]
- 2.) The Trial Court’s Abuse of Discretion Standard to “Define” the term use of a Handgun / and “Describe” the Description in the Court’s Jury Instructions pursuant to the Maryland Pattern Jury Instructions. [statutory and case citations omitted]
- 3.) Trial Court’s Abuse of Discretion to Allow State’s Attorney to choose between two sets of Ballistics to be entered into evidence without the Testimony of the Expert witness to corroborate, and Ineffective Assistance of Counsel to allow all the above to occur. [citation to transcript omitted]

In Conclusion Principal Grounds for Granting a New Trial / and to Set Aside this Verdict and Misconduct or Error of the Trial Judge; Fraud or Misconduct of the State’s Attorney Abuse of Argument; Moreover a Motion for a New Trial can be Granted at the instance of the Defendant in a Criminal Case tried by a Jury where the Verdict was contrary to the Law While Maryland Juries are Judges of the Law an improper or unwarranted Conclusion can be set aside[.]

The circuit court denied relief. For the reasons to be discussed, we shall affirm the judgment.

Rule 4-331(b)(1) provides that the “court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial . . . in the circuit courts, on motion filed within 90 days after its imposition of sentence.” After 90 days, “the court has revisory power and control over the judgment [only] in case of fraud, mistake, or irregularity.” *Id.* Mr. Barksdale filed his Rule 4-331(b) motion years after imposition of sentence in this case and, therefore, the judgment is subject to revision only in the event of “fraud, mistake, or irregularity.” Those terms, however, are narrowly defined and strictly applied. *See generally Peay v. Barnett*, 236 Md. App. 306, 321 (2018) (“Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, to ensure finality of judgments.”). As this Court has previously observed, absent a narrow interpretation of the phrase “fraud, mistake, or irregularity,” “almost no criminal conviction would be safe from belated attack.” *Minger v. State*, 157 Md. App. 157, 172 (2004).

In his motion, Mr. Barksdale alleged “fraud” in the simplest of terms, merely stating in his final paragraph, “Fraud or Misconduct of the State’s Attorney Abuse of Argument.” He failed, however, to provide any explanation or supporting facts to support the bald allegation. As the moving party, Mr. Barksdale had “the burden of persuading the trial judge” that a new trial “is called for[.]” *Jackson v. State*, 164 Md. App. 679, 686 (2005). Mr. Barksdale failed to even make a *prima facie* case that his trial was tainted by extrinsic fraud. *See State v. Rodriguez*, 125 Md. App. 428, 448-49 (1999) (“[T]he type of fraud

necessary to vacate an enrolled judgment is extrinsic fraud, not fraud which is intrinsic to the trial of the case itself.”) (quotation marks and citation omitted).

“The word ‘mistake’ . . . is ‘limited to a jurisdictional error, i.e., where the court has no power to enter judgment.’” *Minger*, 157 Md. App. at 171 (quotation marks and citation omitted). “Irregularity” means “irregularity of process or procedure,” such as the failure of the clerk to notify a party of the entry of a judgment. *Id.* (quotation marks and citation omitted). In other words, “‘irregularity, in the contemplation of the Rule, usually means irregularity of process or procedure, *not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.*’” *Id.* at 175 (quoting *Weitz v. MacKenzie*, 273 Md. 628, 631 (1975) (emphasis added in *Minger*)). Mr. Barksdale failed to allege “mistake or irregularity” of the sort that would warrant a new trial.

In short, the allegations Mr. Barksdale raised in support of his motion cannot be characterized as “fraud, mistake, or irregularity” for purposes of Rule 4-331 and appear to be issues he could have raised on direct appeal. Accordingly, we hold that the circuit court properly denied his motion for a new trial.

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