UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1554

September Term, 2015

KEVIN P. TAYLOR

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 8, 2017

In 1987, Kevin P. Taylor, appellant, was convicted by a jury, in the Circuit Court for Baltimore City, of first degree murder. Taylor was sentenced to life imprisonment and this Court affirmed his conviction on direct appeal. *See Taylor v. State*, No. 1166, Sept. Term. 1987 (filed March 31, 1988).

In 2013, Taylor filed a motion to correct illegal sentence, claiming his sentence was illegal because: (1) the trial court did not provide a diminution credit with respect to his sentence for the 490 days that he was incarcerated prior to trial (diminution credit claim); (2) when polling the jury, the clerk asked if the jurors had found him guilty of first degree murder in indictment number 18601610, when he was actually charged in indictment number 18601601 (indictment claim); (3) when polling the jury, the clerk impermissibly suggested the degree of murder to the forelady (polling claim); and (4) in announcing the verdict, all twelve jurors failed to state, in their own words, whether they had found him guilty of first degree murder, thereby rendering his conviction a nullity (jury unanimity claim). The trial court denied Taylor's motion without a hearing. On appeal, Taylor raises three issues that are reducible to one: whether the trial court erred in denying his motion to correct illegal sentence. For the reasons that follow, we affirm.

An illegal sentence, for purposes of a motion to correct an illegal sentence pursuant to Rule 4-345(a), is "limited to those situations 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." *Chaney v. State*, 397 Md. 460, 466 (2007). Despite some form of error or alleged injustice, neither a

procedural illegality nor a trial error committed during the sentencing proceeding is an illegality that inheres in the sentence itself, and any such errors must be raised during a timely filed direct appeal. *Carlini v. State*, 215 Md. App. 415, 426 (2013) (citation omitted).

Here, Taylor's diminution credit claim is not cognizable under Rule 4-345(a). *See Haskins v. State*, 171 Md. App. 182, 189 (2006). Moreover, his indictment claim merely points out a misstatement by the clerk in reading the indictment number to the jury; an error that was procedural and would not render his conviction or sentence substantively unlawful. Finally, Taylor's polling claim challenges the trial court's polling process, which the Court of Appeals has recently held is a procedural challenge that cannot be raised in a motion to correct illegal sentence. *See Colvin v. State*, __ Md. __ (2016) (No. 8, September Term 2016) (filed December 15, 2016).[1] Because these claims could not be properly raised in a Rule 4-345(a) motion, we need not address them on appeal.

Moreover, to the extent that Taylor's jury unanimity claim is cognizable under Rule 4-345(a), it lacks merit. To support a first degree murder conviction, the jury verdict must reflect that the jurors unanimously found the defendant guilty, not just of murder, but of

[1] We note that, even if these claims could have been raised in a motion to correct illegal sentence, they lack merit. The commitment record in Taylor's case indicates that the trial court credited him with the 490 days he spent in custody awaiting trial. Moreover, even if the clerk committed a clerical error by transposing the indictment numbers when polling the jury, that did not prevent the trial court from rendering a verdict and sentence in Taylor's case as he was charged with first degree murder under a valid indictment and the jury found him guilty based on the facts alleged in that indictment. Finally, Taylor's claim that the clerk's use of the words "guilty of first degree murder," when asking the forelady to state the jury's verdict, was impermissibly suggestive is without merit. That claim is premised on an excerpt from *Ford v. State*, 12 Md. 514, 534 (1859) that set forth the "questions presented" by the appellant in that case and did not reflect the opinion of the Court.

murder in the first degree. The Court of Appeals has made clear, however, that each juror need not utter those specific words. *See Strong v. State*, 261 Md. 371 (1971), *vacated*, 408 U.S. 939 (1972) (vacating death sentence). In *Strong*, the forelady announced the verdict as: "Guilty. Guilty of first degree murder, the first degree." *Id*. at 373. During the subsequent polling, the individual jurors merely responded: "Yes," or "Yes, it is," when asked if their verdict was the same as the forelady's. *Id*. On appeal, Strong argued, as Taylor does here, that the murder verdict was defective because the individual jurors did not mention the degree of murder. The Court of Appeals held that the verdict was valid, stating that the jurors' response to the polling question was "the equivalent of each juror saying: 'I find the accused guilty of murder in the first degree.'" *Id*. at 374.

The facts of this case are indistinguishable from *Strong* in that, after the forelady announced her verdict of first degree murder, all eleven jurors indicated that they had heard her verdict and stated that their verdict was the same. Thereafter, all of the jurors hearkened to the verdict and agreed, in unison, they had found appellant guilty of first degree murder. That was all that was required to reflect the jury's verdict in Taylor's case.

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