

Circuit Court for Carroll County
Case Nos: 06-K-01-27770 & 06-K-01-27771

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 2093 & 2480

September Term, 2018

ANTONIO L. BROWN

v.

STATE OF MARYLAND

Arthur,
Gould,
Zarnoch, Robert
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 5, 2019

*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 2001, a jury in the Circuit Court for Carroll County convicted Antonio L. Brown, appellant, of 26 criminal charges, including two counts of first-degree rape. The court sentenced him to two concurrent terms of life imprisonment for the first-degree rapes, with all but 60 years suspended, and to additional terms for the remaining offenses, with a total active sentence of 85 years' imprisonment. This Court affirmed the judgments on direct appeal. *Brown v. State*, No. 2252, September Term, 2001 (filed August 15, 2003), *cert. denied*, 378 Md. 614 (2003).

In 2018, Mr. Brown filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he asserted that his sentences were illegal because, he claimed, the verdicts were not unanimous. Because there was no transcript or audio recording of the taking of the verdict,¹ his claim centered on hand-written notes taken by the court reporter, which he interpreted to reflect the failure of certain jurors, upon polling, to provide a response on all counts. Mr. Brown also maintained that, during the taking of the verdict, certain jurors had shaken their heads and made gestures, which he asserted indicated their disagreement with the verdicts as announced. (He did not dispute that the record reflected that the foreman had announced the jury's verdict as guilty on all counts.)

The circuit court held a hearing on the motion. Mr. Brown presented argument, but did not testify or call any witnesses to support his contention. The circuit court denied

¹ The transcript of the trial ends abruptly during closing arguments. The following note from the court reporter then appears on the transcript: “(Final tape of balance of proceedings could not be transcribed due to a misalignment of tape during recordation; however, Court Reporter notes were able to be taken and are attached. We do not record proceedings using back-up tapes.)”

relief. In its written memorandum supporting its decision, the circuit court found that the verdicts “were unanimous and returned in open court in accordance with Maryland Rule 4-327(a).” Specifically, the court found that,

 sometime during the fourth day of trial, the recording device malfunctioned and the Court Reporter transcribed the remainder of the proceedings in a summary fashion, rather than word for word. It is apparent that the Clerk inquired as to the jury’s verdict on each of eighteen counts in case number 06-K-01-27770 and each of the eight counts in case number 06-K-01-27771. The foreman orally responded “guilty” as to all counts in both cases. The jury was then polled at the request of defense counsel as to whether the foreman’s verdict was their verdict, and the jury unanimously agreed.

[I]t appears that all jurors simply answered “Yes” or “Yes, Yes” when they were individually polled. There is no indication of hesitation or reluctance in the jurors answers. Though a court may find ambiguity based on non-verbal gestures, such ambiguity cannot be presumed in this matter. It is more probable that the alleged gestures made by the jurors indicated their disgust and appalment with the grim circumstances and facts surrounding this case.

The court concluded that “the jury was properly polled” and that “hearkening of the jury was not required.”

On appeal, Mr. Brown reiterates the contentions he made before the circuit court. The State argues that Mr. Brown failed to “rebut the strong presumption of regularity in the proceedings,” points out that Mr. Brown did not raise this issue on direct appeal or in his petition for post-conviction relief, and asserts that his claim is based on alleged procedural errors in the taking of the verdict and hence, it is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence.

We agree with the State that Mr. Brown’s challenge to the taking of the verdict in his case is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence and, therefore, we shall affirm the judgment of the circuit court. In *Colvin v. State*, 450 Md. 718 (2016), the Court of Appeals addressed a very similar challenge – that a sentence was illegal because of an alleged defect in the polling process – and held that “[s]uch claims do not come within the purview of Rule 4-345(a).” *Id.* at 728. The Court stated that, “[a]n alleged procedural error in the taking of the verdict must be preserved by contemporaneous objection and, if not cured at the time, be raised on direct appeal, not through Rule 4-345(a).” *Id.* at 728-729.

Moreover, after reviewing the record before us, we discern no error in the circuit court’s conclusion that the jury, in fact, unanimously found Mr. Brown guilty of all counts.

**JUDGMENT OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**