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Recent Development: Colvin v. State: Not Polling the Jury Foreperson Individually After Announcing the Jury's Verdict is a Procedural Error, Which Does Not Rise to the Level of a Cognizable Claim Under Maryland Rule 4-345(a)

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RECENT DEVELOPMENT

COLVIN V. STATE: NOT POLLING THE JURY FOREPERSON INDIVIDUALLY AFTER ANNOUNCING THE JURY’S VERDICT IS A PROCEDURAL ERROR, WHICH DOES NOT RISE TO THE LEVEL OF A COGNIZABLE CLAIM UNDER MARYLAND RULE 4-345(a).

By: Kayla M. DiNuccio

The Court of Appeals of Maryland held that a motion to correct an illegal sentence can only be granted if the error is based on substantive law. *Colvin v. State*, 450 Md. 718, 728, 150 A.3d 850, 856 (2016). Not polling the jury foreperson after she announced the jury’s verdicts was a procedural error, and thus not one of the limited exceptions to correct an illegal sentence under Maryland Rule 4-345(a). *Id.* at 726-27, 150 A.3d at 855-56.

In 1989, Roderick Colvin (“Colvin”) was tried before a jury in the Circuit Court for Baltimore City on numerous charges, including murder and attempted murder. After jury deliberations, the foreperson announced the verdicts for the jury on each charge, finding Colvin guilty of all charges except for the first-degree murder charge. At defense counsel’s request, the clerk polled each juror but failed to individually poll the foreperson. The clerk then hearkened the verdicts and asked if all jurors agreed, to which all jurors, including the foreperson, responded in the affirmative.

Following the trial, Colvin was sentenced to life imprisonment plus 20 years. He appealed to the Court of Special Appeals of Maryland but did not challenge the method of jury polling used or argue that the sentence he received was illegal. The court affirmed Colvin’s convictions in an unreported opinion, and his petition for *writ of certiorari* was denied. In December 2000, Colvin’s petition for post-conviction relief was denied, along with his application for leave to appeal in 2002.

In September 2013, Colvin filed a motion to correct an illegal sentence under Maryland Rule 4-345(a) (“Rule 4-345(a)”), arguing that the verdicts were not unanimous, thus rendering them unlawful under Maryland Rule 4-327(a). The Circuit Court for Baltimore City denied the motion, holding that a defect in the polling process was not a cognizable claim under Rule 4-345(a). Colvin filed a direct appeal to the Court of Special Appeals of Maryland, which stated that Colvin’s claim was cognizable under the rule, but that it failed on the merits. Colvin then filed a petition for *writ of certiorari* to determine whether the Court of Special Appeals of Maryland erred in holding that polling a jury foreperson is not necessary to ensure an unanimous verdict. The State filed a conditional cross-petition asking whether a defect in the polling procedure was allowed on a motion to correct an illegal sentence. The court granted both petitions.

The Court of Appeals of Maryland began its analysis by looking at the scope of Rule 4-345(a). *Colvin*, 450 Md. at 724-26, 150 A.3d at 854-55. The rule states that a court “may correct an illegal sentence at any time,” creating a limited exception to the finality of judgments. *Id.* at 725, 150 A.3d at 854 (citing *State v. Griffiths*, 338 Md. 485, 496, 659 A.2d 876, 882 (1995)). If a sentence is illegal under Rule 4-345(a), a defendant may file a motion in the trial court to rectify the error under limited circumstances. *Colvin*, 450 Md. at 725, 150 A.3d at 854 (citing *Chaney v. State*, 397 Md. 460, 466, 918 A.2d 506, 509 (2007)).

The scope of the limited exception for allowing challenges on illegal sentences is narrow. *Colvin*, 450 Md. at 725, 150 A.3d at 854. Under Rule 4-345(a), the illegality must exist in the sentence itself, meaning that the sentence is “intrinsicly and substantively unlawful.” *Id.* (quoting *Chaney*, 397 Md. at 466, 918 A.2d at 510). The court stated that a procedural error in the sentencing process is not enough. *Colvin*, 450 Md. at 725, 150 A.3d at 854 (citing *Tshiwala v. State*, 424 Md. 612, 619, 37 A.3d 308, 312 (2012) (citation omitted)).

The court then looked to case law to determine whether procedural errors could make a sentence illegal in order to bring a motion under Rule 4-345(a). *Colvin*, 450 Md. at 725, 150 A.3d at 854. In *Baker v. State*, the defendant filed a motion under Rule 4-345(a) and alleged that his sentence was imposed in a racially- and geographically-biased manner. *Id.* (citing *Baker v. State*, 389 Md. 127, 131-32, 883 A.2d 916, 918 (2005)). The court held that the claim was not cognizable under Rule 4-345(a) because the illegality did not exist in the sentence itself. *Colvin*, 450 Md. at 725, 150 A.3d at 854 (citing *Baker*, 389 Md. at 137, 883 A.2d at 922). Similarly, in *Hoile v. State*, the defendant argued that not allowing the victim to speak at the sentencing hearing rendered his sentence illegal. *Colvin*, 450 Md. at 726, 150 A.3d at 855 (citing *Hoile v. State*, 404 Md. 591, 622-23, 948 A.2d 30, 49 (2008)). Following the same reasoning, the court held that the sentence was not “illegal on its face.” *Colvin*, 450 Md. at 726, 150 A.3d at 855 (citing *Hoile*, 404 Md. at 622-23, 948 A.2d at 49).

The State argued that *Colvin* could not bring a Rule 4-345(a) motion because illegal sentences can only be amended on appeal for substantive errors. *Colvin*, 450 Md. at 727, 150 A.3d at 855. *Colvin* argued that he received an unconstitutional verdict because the foreperson was not included in the clerk’s polling of the jury. *Id.* at 726-27, 150 A.3d at 855. *Colvin* stated that as a result of this error, the verdict was not unanimous and his sentence was illegal under Rule 4-345(a). *Id.* The court indicated that *Colvin* did not make any substantive arguments, nor did he argue that no sentence should have been imposed. *Id.* at 727, 150 A.3d at 855. Accordingly, the court agreed with the State that *Colvin*’s claim was for procedural violations, and thus outside of the scope of Rule 4-345(a). *Id.*

In order to render a final verdict, the clerk must either hearken or poll the jurors in order to ensure a unanimous verdict. *Colvin*, 450 Md. at 727, 150 A.3d at 855. Both procedures serve the same purpose; therefore the use of

both in a single trial is not required unless requested by counsel. *Id.* at 727, 150 A.3d at 856 (citing *State v. Santiago*, 412 Md. 28, 37, 985 A.2d 556, 561 (2009) (citations omitted)). In this case, each juror, aside from the foreperson, was individually polled. *Colvin*, 450 Md. at 722, 150 A.3d at 853. Subsequently, the jury was hearkened to the verdict. *Id.* As such, even with the alleged procedural violation in the polling process, a final verdict was rendered and was unanimous. *Id.* at 728, 150 A.3d at 856.

Without *Colvin*'s unanimity argument, the court refused to address the merits of his claim. *Colvin*, 450 Md. at 728, 150 A.3d at 856. The court stated that even if the processes used to poll the jury were improper, this still would not make the allegation a substantive argument pursuant to Rule 4-345(a). *Id.* The proper way to challenge a verdict for an alleged procedural violation is through "contemporaneous objection and, if not cured at the time, be raised on direct appeal." *Id.* at 728-29, 150 A.3d at 856. This requirement is intended to further judicial economy and preserve the finality of judgments. *Id.* at 728, 150 A.3d at 856. *Colvin*'s claim did not meet the requirements for a successful claim to correct an illegal sentence under Rule 4-345(a). *Id.* Thus, the court reaffirmed the rule that only substantive errors may be brought by a Rule 4-345(a) motion. *Id.*

In *Colvin*, the Court of Appeals of Maryland found that a motion to correct an illegal sentence under Rule 4-345(a) can only be brought if it is based on substantive law. If Rule 4-345(a) motions could be brought for procedural and substantive errors, courts would be overwhelmed with a large caseload for minor errors, which does not further judicial economy. Those kinds of arguments have no bearing on whether a conviction is substantively lawful. Undermining jury verdicts for procedural violations would strip verdicts of their essential purpose. Attorneys should be mindful of preserving issues related to a jury verdict at the appropriate time as well as being aware of various vehicles to challenge procedural errors that do not include Rule 4-345(a).