UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1336

September Term, 2016

DONNELL ANTONIO WELLS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2017

Convicted of unlawful possession of a firearm by a convicted felon, after a jury trial in the Circuit Court for Prince George's County, Donnell Antonio Wells, appellant, contends that the trial court erred (1) in making an improper comment on the evidence during voir dire and (2) in basing its sentence on an improper consideration, specifically a bare list of his prior arrests that did not result in convictions. With respect to both of these claims, Wells acknowledges that he did not object at trial, but he asks us to exercise our discretion to engage in plain error review. We decline to do so and affirm his conviction.

Shortly after beginning voir dire, the trial court stated:

> We will proceed. On or about December 23rd, 2015 in the area of 6810 Central Avenue, Capitol Heights, Prince George's County, Maryland, *the defendant Donnell Antonio Wells punched and pointed a firearm at Ebony Silver*. The defendant was located in the area of the Addison Road metro station. Does anyone know anything about this case? No affirmative response.

Wells contends that, while "likely inadvertent," the trial court's statement to the venire that he had "punched and pointed a firearm" at the victim was an improper comment on a question of fact.

Wells also takes issue with the following statement made by the trial court before he was sentenced:

> *This is the issue, you have 14 arrests. Fourteen times you've been arrested. They've been disposed of different ways, but I can't get away from 14 arrests.* And the last was assault with a deadly weapon. If that wasn't enough to motivate you not to carry a handgun, I don't know what is. And now you have another child that you haven't even seen. This is kind of with respect – I have to make a decision not just about you and your family, but about the community and the public.
>
> I read your letter. It was very thoughtful. I am pleased to see you have availed yourself of some programs, but quite honestly, this is the kind

> of – see, when people are on the inside because they need to do just enough to grasp my attention and for me to feel compassion, which I have. I have compassion. Obviously I read everything. I came out, I knew it was your birthday today. I knew last week you were going to have a birthday today. My sentence is as follows . . .

Wells asserts that the sentencing court's reference to his fourteen prior arrests, eight of which did not result in convictions, indicates that it relied on impermissible considerations in fashioning his sentence. *See Craddock v. State*, 64 Md. App. 269, 278 (1985) ("[T]he sentencing judge would have erred had he considered a bare list of prior arrests that did not result in convictions.").

Although this Court has discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Court of Appeals has emphasized that appellate courts should "rarely exercise" that discretion because "considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court[.]" *Ray v. State*, 435 Md. 1, 23 (2013) (citation omitted). Therefore, plain error review "is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial." *Savoy v. State*, 218 Md. App. 130, 145 (2014) (quotation marks and citation omitted). It involves four prongs: (1) the error must not have been intentionally relinquished or abandoned; (2) the error must be clear or obvious, not subject to reasonable dispute; (3) the error affected appellant's substantial rights, which means he must demonstrate that it affected the outcome of the court proceeding; (4) the appellate court has discretion to remedy the error, but this ought to be exercised only if the error affects the fairness, integrity, or public reputation of judicial proceedings. *Id*.

Even if we assume that the trial court's statements in both instances constituted "clear or obvious" error, we are persuaded that those errors did not "affect appellant's substantial rights" or "the fairness, integrity, or public reputation of judicial proceedings." Both of these errors could have been corrected had Wells made a timely objection. To permit Wells to refrain from objecting at trial in order to raise the issue for the first time on appeal would run counter to the considerations of fairness and judicial efficiency discussed previously. *See Chaney v. State*, 397 Md. 460, 468 (2007). Consequently, we decline to exercise our discretion to engage in plain error review. *See Martin v. State*, 165 Md. App. 189, 195 (2005) (noting that it is "the extraordinary error and not the routine error that will cause us to exercise the extraordinary prerogative [of reviewing plain error]").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.