Circuit Court for Washington County
Case No. C-21-CR-23-000545

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2368

September Term, 2023

CHARLES CALVIN JEMISON

v.

STATE OF MARYLAND

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 6, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Washington County, Charles Calvin Jemison, appellant, was convicted of first-degree assault (Count 1), second-degree assault (Count 2), possession of a firearm in the commission of a crime of violence (Count 3), illegal possession of ammunition (Count 6), unlawful possession of a regulated firearm after having been convicted of a disqualifying crime (Count 7), possession of a firearm without a serial number (Count 8), use of a firearm in a crime of violence (Count 9), carrying a loaded handgun on his person (Count 10), possession of a handgun on his person (Count 11), and reckless endangerment (Count 12). The court imposed a sentence of 10 years' imprisonment on Count 3; 15 years' imprisonment on Count 1, consecutive to Count 3; 1 year imprisonment on Count 6, concurrent with Count 3; 2 years' imprisonment on Count 8, concurrent with Count 3; 20 years' imprisonment on Count 9, consecutive to Count 1; three years' imprisonment on Count 10, concurrent with Count 3; and 5 years' imprisonment on Count 12, consecutive to Count 3 and concurrent with Count 1. The remaining counts were merged for sentencing, resulting in a total executed sentence of 45 years.

Appellant raises four issues on appeal: (1) whether the trial court plainly erred in propounding a compound "strong feelings" voir dire question; (2) whether his conviction for possession of a regulated firearm must be vacated because he was also convicted of possession of a firearm after having been convicted of a crime of violence; (3) whether his sentence for reckless endangerment should merge for sentencing with his conviction for first-degree assault; and (4) whether his conviction for carrying a loaded handgun on his person should merge for sentencing with his conviction for use of a firearm in a crime of

violence. For the reasons that follow, we shall vacate appellant's conviction for possession of a regulated firearm, vacate appellant's sentences for reckless endangerment and carrying a loaded handgun on his person, and otherwise affirm the judgments of the circuit court.

VOIR DIRE

During voir dire the court informed the prospective jurors of the charges against appellant. Thereafter, it asked the following question:

> Now, that's what he's charged with, and the next question is two parts and wait until I ask the second part before you stand up. Does anybody have strong feelings about those types of crimes and I, I can understand many people might, and if you do, now stand up if this part applies to you, would those strong feelings prevent you from sitting as a fair and impartial juror in a matter that involved those crimes. If that applies to you, please stand up.

Defense counsel did not object to this question at any point during the voir dire process. Moreover, after the court finished questioning the prospective jurors it specifically asked defense counsel if he had any objections, to which defense counsel replied that he did not. The court then followed up, by stating that it believed it had "fairly covered everything on yours" with respect to voir dire, to which defense counsel responded "Yes, sir. Yes you did. Thank you." Later, defense counsel expressed his satisfaction with the jury that was impaneled.

On appeal, appellant contends that the above voir dire question was impermissible because it allowed potential jurors to self-select with regard to their own potential bias or impartiality and, thus, precluded the circuit court from discerning for itself whether the prospective jurors were capable of impartiality. *See generally Dingle v. State*, 361 Md. 1, 14-15 (2000) (repudiating two-part "compound" questions, which ask jurors to assess their

own partiality, because "it is the trial judge that must decide whether, and when, cause for disqualification exists for any particular venire person"). He acknowledges, however, that this claim is not preserved because he did not object at trial. He therefore requests that we engage in plain error review.

Although this Court has discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Supreme Court of Maryland 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) (quotation marks and 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). Under the circumstances presented, we decline to overlook the lack of preservation and thus do not exercise our discretion to engage in plain error review. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (noting that the five words, "[w]e decline to do so[,]" are "all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation" (emphasis omitted)).

SENTENCING

Appellant raises three issues with respect to the sentences imposed by the trial court. The State agrees with appellant with respect to these issues, as do we. First, appellant asserts that his conviction for possession of a regulated firearm must be vacated entirely

because he was also convicted of possession of a firearm after having been convicted of a crime of violence. The "Legislature did not intend for a court to render separate multiple verdicts of convictions on an individual for illegal possession of a regulated firearm . . . where that individual fits within several categories of prior qualifying convictions, but only possessed a single regulated firearm on a single occasion." *Melton v. State*, 379 Md. 471, 474 (2004). If the jury convicts a defendant of multiple such offenses where there was "only a single act of possession[,]" only the conviction and sentence for the offense with the greatest penalty should remain. *Clark v. State*, 218 Md. App. 230, 253 (2014) (quotation marks and citation omitted). Here, the evidence demonstrated only a single act of firearm possession. Consequently, his conviction for possession of a firearm after conviction of a disqualifying crime, which is the count with the lesser penalty, must be vacated.

Appellant next contends that his conviction for reckless endangerment should have merged with his conviction for first-degree assault. Again, appellant is correct. Merger of those offenses is required when the charges are based on the same conduct. *See Marlin v. State*, 192 Md. App. 134 (2010). Here, the evidence at trial supporting appellant's convictions for these offenses was that he brandished a firearm at a neighbor and then shot that firearm into the air. Even assuming that the acts of brandishing the firearm and shooting the firearm were distinct, nothing in the charging documents, jury instructions, verdict sheet, or arguments of counsel indicates that the jury relied on those separate acts to form the basis of their convictions. We must, therefore, resolve that ambiguity in

appellant's favor and merge his sentence for reckless endangerment into his sentence for first-degree assault.

Finally, appellant claims that his sentence of carrying a loaded handgun on his person should merge into his conviction for use of a firearm in a crime of violence. "[W]hen convictions for use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the same acts, separate sentences for those convictions will not stand." *Holmes v. State*, 209 Md. App. 427, 456 (2013) (citation omitted). As previously noted, the evidence supporting appellant's conviction for carrying the handgun was the same as the evidence supporting his conviction for use of the firearm in a crime of violence. Consequently, appellant's sentence for carrying a loaded handgun on his person should be vacated.[1]

CONVICTION FOR POSSESSION OF A REGULATED FIREARM HAVING BEEN CONVICTED OF A DISQUALIFYING CRIME (COUNT 7) VACATED. SENTENCES FOR CARRYING A LOADED HANDGUN (COUNT 10) AND RECKLESS ENDANGERMENT (COUNT 12) VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID 1/2 BY APPELLANT AND 1/2 BY WASHINGTON COUNTY.

[1] Our decision to vacate appellant's conviction on Count 7 and his sentences on Counts 10 and 12 does not alter the total sentencing package imposed by the trial court. Therefore, we shall not remand the case for resentencing.