Circuit Court for St. Mary's County
Case No. C-18-CR-22-000431

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2309

September Term, 2023

MALCOLM C. YOUNG

v.

STATE OF MARYLAND

Arthur,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 9, 2024

*This is a per curiam opinion. Consistent with 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 St. Mary's County, Malcolm C. Young, appellant, was convicted of second-degree murder and use of a firearm in the commission of a crime of violence. During voir dire, the trial court asked the prospective jury pool the following question:

> Would any of you have such strong feelings about handguns, firearms, or gun violence that this evidence would affect your ability to be fair and impartial as a juror.

Appellant's sole contention on appeal is that this constituted an improper compound question that required jurors to assess their own bias. Acknowledging that he did not object to the court asking this question, he requests us to review this claim for plain error. The State counters that appellant not only failed to object, but affirmatively waived his right to plain error review. For the reasons that follow, we shall affirm.

While "a forfeited objection [may] be the subject of plain error review, . . . an issue that had been waived results in procedural default in every instance." *Joyner v. State*, 208 Md. App. 500, 512 (2012); *accord State v. Rich*, 415 Md. 567, 580 (2010) ("Forfeited rights are reviewable for plain error ... waived rights are not." (citation omitted)).

Appellant was convicted after a second trial, with his first trial ending in a mistrial. Prior to his first trial, appellant submitted his requested voir dire, which included the following question:

> You may hear evidence that Mr. Young possessed a handgun during the crime charged in this case. Do any of you have such strong feelings about handguns, firearms, or gun violence that this evidence would affect your ability to be a fair and impartial juror?

This question is essentially identical to the question that appellant now challenges. The court asked that question to the prospective panel during voir dire at the first trial. And at the conclusion of that voir dire, defense counsel informed the court that he was "satisfied" with the voir dire.

Following the mistrial, the parties appeared for a status conference at which the court asked the parties if they were agreeable to sharing their previously proposed voir dire with the new trial judge as they "had already done voir dire and everyone had agreed to that voir dire." Defense counsel stated that he had "no objection." On the morning of the second trial, the trial judge stated on the record that the parties had already met and gone over the proposed voir dire, and then asked each party if they were "satisfied." Defense counsel indicated that he was, and also agreed that there were no "issues" with the voir dire that needed to be addressed. Following the conclusion of voir dire, defense counsel again agreed that he was "satisfied with the voir dire" and accepted the panel without qualification.

Based on the foregoing, we conclude that appellant affirmatively waived his claim of error by specifically requesting the court to ask the compound question at issue and then affirmatively indicating his satisfaction with the voir dire process on multiple occasions. Consequently, we decline to exercise our discretion to engage in plain error review of this issue and shall affirm the judgments of the circuit court. *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 and footnote omitted)).

JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.