

Circuit Court for Worcester County
Case No. C-23-CR-17-000016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 760

September Term, 2017

ERICK RAMIREZ

v.

STATE OF MARYLAND

Woodward, C.J.,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: May 10, 2018

* 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.

On June 19, 2017, a jury sitting in the Circuit Court for Worcester County took eight minutes to convict Erick Ramirez, appellant, of second degree rape, second degree sexual offense, third degree sexual offense, fourth degree sexual offense, second degree assault, and filming of child pornography. The same day, the circuit court sentenced appellant to thirteen years for second degree rape; thirteen years for second degree sexual offense (to run concurrent to the thirteen years for second degree rape); five years for third degree sexual offense (to run concurrent to the thirteen years for second degree rape and concurrent to the thirteen years for second degree sexual offense); and ten years, suspending all but five for the filming of child pornography (to run consecutive to all other sentences).¹

Appellant’s sole contention on appeal is that “the trial court abused its discretion in proceeding to sentencing immediately after the verdict[.]” For reasons that follow, we affirm appellant’s convictions.

After the verdict, the following colloquy occurred:

[COURT]: Both sides prepared for sentencing?

[DEFENSE COUNSEL]: **We could certainly go forward today, Your Honor.** I don’t know with [appellant’s] record and considering the seriousness of the charges, if the [c]ourt would want to have a PSI or not.

[COURT]: Is the State prepared to go ahead forward?

[PROSECUTOR]: I would be prepared to go forward. I would just need a couple minutes to prepare the Maryland sentencing guidelines.

¹ The second degree assault and fourth degree sexual offense were merged for sentencing purposes.

[COURT]: The [c]ourt doesn't propose to order a presentence investigation, so the [c]ourt will go forward with sentencing today. I'll take a recess. You let me know when you have the sentencing guidelines prepared.

[PROSECUTOR]: Thank you, Your Honor.

(Emphasis added). After a recess, the circuit court proceeded with sentencing without any request from the defense for a presentence investigation report or any objection from the defense to proceeding to sentencing without a presentence investigation report.

On appeal, appellant concedes that “[i]n this case, defense counsel failed to object to the trial court’s decision to immediately proceed to sentencing.” Accordingly, appellant requests that we engage in plain error review.²

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, 22-23 (2013) (citation omitted). Therefore, “[p]lain error review is reserved for errors that are compelling, extraordinary, exceptional or fundamental to assure the

² We note that the State argues that appellant’s claim on appeal is unreviewable, because appellant waived this appellate challenge when defense counsel stated: “[w]e could certainly go forward today, Your Honor.” See *State v. Rich*, 415 Md. 567, 580 (2010) (“If the defendant has both invited the error, and relinquished a known right, then the error is waived and therefore unreviewable.”). We need not decide whether defense counsel’s statements before sentencing constitute an explicit waiver because, as explained *infra*, this Court declines appellant’s request to conduct plain error review.

defendant a fair trial.” *Yates v. State*, 429 Md. 112, 130 (2012) (internal quotation marks and citation omitted).

In the instant case, when the circuit court expressed a desire to proceed immediately to sentencing, defense counsel did not request that the sentencing be scheduled on a later date, nor did he ask for a presentence investigation report. Defense counsel declined to take such action despite having the opportunity to talk to appellant before sentencing when the court took a recess to give the prosecutor time to calculate the sentencing guidelines for appellant’s convictions. Moreover, the sentence imposed by the court was within the sentencing guidelines in this case. Under the circumstances presented, we decline to overlook the lack of preservation and exercise our discretion to engage in plain error review. *See, e.g., 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).

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**