

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10634
Non-Argument Calendar

D.C. Docket No. 8:17-cr-00213-SDM-AAS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE PEREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(March 13, 2019)

Before TJOFLAT, WILSON and HULL, Circuit Judges.

PER CURIAM:

Jorge Perez was convicted on one count of possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), one count of possession with intent to distribute heroin in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and one count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). He was sentenced to 210 months' imprisonment followed by 72 months' supervised release.

Perez now appeals the District Court's refusal to ask submitted questions during *voir dire* and its denial of his motion to strike the entire jury pool. He argues that the District Court abused its discretion when it failed to ask any of counsel's submitted questions about firearms and drugs, and that he was consequently denied a fair trial. He also argues that the jury pool was tainted by the District Court's reading of the full indictment—which included his prior drug conviction—and that the District Court did not ameliorate the problem by re-reading the indictment without the information and issuing instructions to the prospective jurors. Because we disagree that the District Court erred in either regard, we affirm Perez's convictions.¹

¹ Because we write for the parties, we set out only what is necessary to explain our decision.

I.

We review a district court's method of conducting *voir dire* for abuse of discretion. *United States v. Hill*, 643 F.3d 807, 836 (11th Cir. 2011). However, when a party fails to timely assert a right, we consider the argument forfeited and review only for plain error. *United States v. Gonzalez*, 834 F.3d 1206, 1217 (11th Cir. 2016). To prevail under this standard, a defendant must show: (1) an error, (2) that was plain, (3) that affected substantial rights, and (4) that "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1218 (alteration omitted) (citation omitted). The defendant bears the burden of persuasion that an error affected his substantial rights and, further, "must show that there is a reasonable probability that the error affected the outcome of the district court proceedings." *Id.* (citation omitted).

The district court's *voir dire* only needs to provide reasonable assurance to the parties that any prejudice of the potential jurors would be discovered. *Hill*, 643 F.3d at 836. District courts have ample discretion in determining how to conduct *voir dire* because "the obligation to impanel an impartial jury lies in the first instance with the trial judge," and that judge must rely largely on his or her immediate perceptions. *Rosales-Lopez v. United States*, 451 U.S. 182, 189, 101 S. Ct. 1629, 1634 (1981). To find that the district court was constitutionally

compelled to question the jury pool on a particular subject, the failure to ask the questions “must [have] render[ed] the defendant’s trial fundamentally unfair.” *Mu’Min v. Virginia*, 500 U.S. 415, 425–26, 111 S. Ct. 1899, 1905 (1991) (citation omitted). The district court’s discretion extends both to the decision whether to submit suggested questions to the jury and to the decision whether to question prospective jurors collectively or individually. *United States v. Brunty*, 701 F.2d 1375, 1378 (11th Cir. 1983).

Here, Perez objected to the District Court’s decision not to ask the venire various drug-related questions. Although he also submitted firearms-related questions that the District Court declined to ask, he did not object to this decision. Thus, we review the District Court’s decision not to ask the drug-related questions for abuse of discretion, *Hill*, 643 F.3d at 836, but review only for plain error the District Court’s decision not to ask the firearm-related questions, *United States v. Gonzalez*, 834 F.3d 1206, 1217 (11th Cir. 2016).

To prevail on this argument with respect to the drugs-related questions, Perez has to show that the District Court’s refusal to ask the questions “render[ed] [his] trial fundamentally unfair.” *Mu-Min*, 500 U.S. at 415, 111 S. Ct. at 1905 (citation omitted). This is a high bar, and Perez does not come close to satisfying it.

Perez points to the dismissal of Jurors 9 and 6 as evidence that members of the jury were prejudiced, and he surmises that this prejudice would have been discovered if the District Court had asked his proposed drug-related *voir dire* questions. The problem with this argument is that neither dismissal had anything to do with the Jurors' views on drugs or firearms. Juror 9 asked to be excused because he feared retaliation from Perez. Admittedly, Juror 9 mentioned that his brother-in-law—who had killed Juror 9's sister—was “on all kinds of pills and drugs and things” when he committed the murder. But his recounting of that experience was offered to illustrate that he “kn[e]w the depths of the prison system if somebody decides they want to retaliate”—it did not betray a general prejudice against drug offenders. He also noted that his father was a “career criminal” in support of his belief about retaliation. Thus, it was fear of retaliation—not prejudice that the District Court failed to ferret out—that led to Juror 9's dismissal.

Juror 6's dismissal similarly fails to support Perez's argument. Like Juror 9, Juror 6 was afraid of retaliation; based on surveillance video introduced into evidence, Juror 6 believed that Perez conducted some of his drug business in Juror 6's neighborhood. Juror 6 also stated that she Perez's mother and sister lived in the area and had seen Juror 6's face and knew Juror 6's name. As with Juror 9, it was a fear of retaliation—not prejudice—that led to Juror 6's dismissal.

Perez also offers the dismissals of Jurors 9 and 6 to support the argument that he was denied a fair trial because the District Court rejected his firearms-related questions. But as we explained above, these jurors were afraid of retaliation, and that's why they were dismissed.

II.

We ordinarily review a district court's determination whether to strike an entire jury pool for a manifest abuse of discretion. *United States v. Trujillo*, 146 F.3d 838, 842 (11th Cir. 1998). The government argues that we should instead review for plain error because Perez had the opportunity to object to the District Court's word-for-word reading of the indictment before it occurred. While we agree that Perez had ample opportunity to object before the District Court read the indictment, we disagree that he forfeited the objection: his motion to strike the jury panel came soon after the District Court's alleged error, and we think that's enough to preserve the issue. Thus, we review the District Court's denial of Perez's motion to strike the jury panel for manifest abuse of discretion.

A district court's comments are not grounds for reversal of a conviction unless they are "so prejudicial as to amount to denial of a fair trial." *United States v. House*, 684 F.3d 1173, 1208 (11th Cir. 2012). Single, isolated comments are often insufficient for a showing of such prejudice. *Id.* And "a clear effect on the jury is required to reverse for comment by the trial judge." *United States v. Palma*,

511 F.3d 1311, 1317 (11th Cir. 2008) (per curiam) (citation omitted). Here, the District Court's reading of the indictment was immediately followed by a re-reading of the indictment without the prior conviction as well as a curative instruction. Apart from several conclusory statements, Perez does not show how this alleged error denied him a fair trial or otherwise affected the jury. Indeed, the evidence against him was overwhelming: Perez did not deny that he possessed heroin and methamphetamine, and the government presented extensive evidence to support the distribution and firearm charges.

III.

The District Court did not err by denying Perez's motion to strike the jury panel or request to read *voire dire* questions to the venire. Accordingly, we affirm Perez's convictions.

AFFIRMED.