

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

JAMES BENJAMIN MOORE, JR.,

Defendant-Appellant.

No. 306898
Oakland Circuit Court
LC No. 2011-237356-FH

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of resisting or obstructing a police officer, MCL 750.81d(1), breaking and entering a vehicle with intent to steal property less than \$200, MCL 750.356a(2)(a), and refusal to submit to fingerprinting, MCL 28.243a. Defendant was acquitted of an additional count of breaking and entering a vehicle with intent to steal property less than \$200. The trial court sentenced defendant to two years' probation, with 183 days to be served in jail for the resisting or obstructing conviction, 93 days in jail for the breaking and entering a vehicle conviction, and 90 days in jail for refusal to submit to fingerprinting. Defendant appeals as of right. We affirm defendant's convictions, but remand for correction of clerical errors in the judgment of sentence.

Defendant argues that the trial court erred by denying his request to dismiss Juror 62 for cause. This Court reviews for an abuse of discretion a trial court's ruling on a challenge for cause. *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000). To obtain reversal for the improper denial of a challenge for cause, a defendant must exhaust his peremptory challenges, demonstrate on the record the desire to excuse another subsequently summoned juror, and that juror must be objectionable. *People v Legrone*, 205 Mich App 77, 81-82; 517 NW2d 270 (1994).

The record demonstrates that defendant is not entitled to relief. Although defendant asserts on appeal that the trial court "allowed people on the jury with a state of mind that would prevent [the] person from rendering a just verdict," the record discloses that Juror 62 did not sit on the jury. Defense counsel used a peremptory challenge to excuse her. At the end of the voir dire, defendant had two peremptory challenges remaining. Because Juror 62 did not sit on the

jury and defendant did not exhaust all of his peremptory challenges, defendant is not entitled to relief. *Legrone*, 205 Mich App at 81-82.

Although the parties do not raise the issue, we note that there are errors in the judgment of sentence. The verdict form and trial transcript both indicate that the jury found defendant not guilty of Count Three, breaking and entering a vehicle with intent to steal property less than \$200. However, the judgment of sentence erroneously indicates that defendant was convicted of Count Three and received a sentence of 90 days in jail for that conviction. The 90-day sentence was actually imposed for defendant's conviction on Count Four, refusing to be fingerprinted, which the judgment of sentence erroneously indicates resulted in a sentence of zero days. Accordingly, we remand for the ministerial task of correcting these clerical errors in the judgment of sentence. MCR 6.435(A); MCR 7.216(A)(7).

Affirmed, but remanded for correction of the judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra