STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO LABARRE,

Defendant-Appellant.

UNPUBLISHED
April 28, 2000

No. 216497
Kalamazoo Circuit Court
LC No. 98-000658-FC

Before: Fitzgerald, P.J., and Bandstra, C.J., and O'Connell, J.

PER CURIAM.

Defendant appeals as of right from his jury-trial convictions of armed robbery, MCL 750.529; MSA 28.797, possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced as an habitual offender to concurrent terms of imprisonment of twenty to forty years for the armed-robbery conviction and two to four years for the drug conviction, to be served consecutive to his mandatory two-year sentence for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court abused its discretion by allowing the prosecutor to impeach him with evidence of a prior larceny conviction. We review the trial court's decision for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). An abuse of discretion exists where an unprejudiced person would conclude that there was no justification or excuse for the decision. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999).

MRE 609(a) allows the impeachment of a witness's credibility by introduction of evidence of a prior conviction. Larceny contains an element of theft, and is therefore admissible for impeachment where it was punishable by imprisonment in excess of one year, and where "the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect." MRE 609(a)(2). In determining the probative value of the evidence, "the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity." MRE 609(b). See also *People v Allen*, 429 Mich 558, 606; 420 NW2d 499 (1988),

amended 429 Mich 1216 (1988). In determining the prejudicial effect of the evidence, "the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decision process if admitting the evidence causes the defendant to elect not to testify." MRE 609(b). See also *Allen, supra* at 606.

The trial court did not abuse its discretion in this case. Because larceny contains an element of theft, it is moderately probative of veracity. *Allen, supra* at 610-611. However, the conviction in question was almost ten years old, thus lessening its probative value. *Id*. at 611. The trial court considered these factors, concluding that, although the age of the conviction detracted from its probative value, it was nonetheless probative of veracity. The trial court also noted that the larceny conviction was sufficiently dissimilar to the charged offenses so that little or no prejudice would result. Moreover, this case did not involve a simple credibility dispute, as defendant would suggest. Rather, the victim's testimony was supported by substantial evidence. The trial court engaged in a reasoned analysis of the relevant factors required under the law. We cannot conclude that there was no justification or excuse for the court's ruling.

Defendant next argues that he did not receive effective assistance of counsel because trial counsel failed to object to the jury array, although it was not a fair cross section of the community. To justify reversal, "a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial." *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). The record in this case is devoid of any evidence that a possible violation of defendant's right to a jury selected from a fair cross section of the community existed. A violation exists where a distinctive group in the community is underrepresented on jury venires as a result of systematic exclusion of that group. *People v Hubbard*, 217 Mich App 459, 473; 552 NW2d 493 (1996). "A systematic exclusion is not shown by one or two incidents of a venire being disproportionate." *Id*. at 481. Defendant claims that only one African-American was on the jury array, but fails to present evidence of systematic exclusion. A "bald assertion that systematic exclusion must have occurred because no African-Americans were in the array is not sufficient . . . ." *People v Flowers*, 222 Mich App 732, 737; 565 NW2d 12 (1997). Absent evidence of systematic exclusion, defendant has failed to establish that he was prejudiced by counsel's failure to object to the jury array.

Defendant also argues that the trial court improperly considered defendant's refusal to admit guilt as a factor in sentencing him. However, the record reflects that the trial court merely considered defendant's lack of remorse as it pertained to defendant's potential for rehabilitation. Indeed, the court noted that defendant failed to exhibit remorse even for the criminal activity to which he did admit. A trial court may consider a defendant's lack of remorse in fashioning an appropriate sentence. *People v Wesley*, 428 Mich 708, 718-719; 411 NW2d 159 (1987) (Archer, J.); *People v Drayton*, 168 Mich App 174, 178-179; 423 NW2d 606 (1988).

Finally, defendant argues that the trial court erred by not dismissing the armed robbery charge. Defendant claims that a conviction of armed robbery may not be predicated on the theft of illegal contraband—here, marijuana. However, the prosecutor also introduced evidence that defendant took the victim's wallet, containing money. This evidence would support defendant's conviction of armed

robbery. An armed robbery conviction involves the theft of "any money or other property." MCL 750.529; MSA 28.797. Therefore, we do not address defendant's argument because it would not provide a basis for relief.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell