

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER DANIEL,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 244552

Wayne Circuit Court

LC No. 01-010640

Before: Saad, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

A jury convicted defendant of second-degree murder, MCL 750.317, but acquitted him of first-degree murder. The trial court sentenced defendant to 30 to 50 years' imprisonment for the second-degree murder conviction. The jury also convicted defendant of possession of a firearm by a person convicted of a felony, MCL 750.224f, for which he received 2 to 5 years' imprisonment, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he received five years' imprisonment. Defendant appeals, and we affirm, but remand for further proceedings regarding the issue of sentencing.

I

On April 14, 2001, defendant accompanied his brother Mark Daniel, Donny Harris, and another man to the home of Harris' "God brother," Erick Morrisette, and Morrisette's girlfriend, Ericka Jackson. Harris testified that he had planned to go to a bar that night with only Mark. However, upon arriving at Mark's house, the two decided that it was too late to go to a bar, so Harris suggested that they go to Morrisette's. Moreover, they invited defendant only because defendant happened to be at Mark's home at the time Harris arrived.

A short time after the four arrived at Morrisette's, Mathon Maxwell and Dale Sylvester, who are Morrisette's neighbors, also arrived. According to Morrisette and Sylvester, Maxwell had been drinking heavily and started "rapping" and talking loudly. As part of his rapping, Maxwell stated something about "busting heads," which apparently angered defendant, and caused him to confront Maxwell. Morrisette testified that he embraced defendant and told him that Maxwell had been drinking, was not serious, and that he intended to send Maxwell home soon. Thereafter, Maxwell continued to taunt defendant, at which point defendant attempted to withdraw a gun from his pocket. Upon seeing the gun, Morrisette, Mark, and the other man that had arrived with Harris, all grabbed defendant. However, defendant managed to overcome them

and shoot Maxwell. During the incident, Maxwell sustained three gunshot wounds and later died from his injuries.

II

Defendant alleges that the trial court engaged in misconduct during the jury voir dire proceedings. Specifically, defendant asserts that the trial court responded with hostility to three potential jurors who stated that they believed that their personal experiences or beliefs would hinder their ability to be fair and impartial. Although all three potential jurors were ultimately excused, defendant contends that the trial court's misconduct intimidated other jurors and prevented them from revealing their own biases. However, defendant has not preserved this issue because he did not object to any of the trial court's alleged misconduct. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Therefore, this Court's review is limited by the plain error doctrine. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Under the plain error doctrine, "[r]eversal is warranted only if the unpreserved error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id.*, citing *Carines*, *supra* at 763. Our review of the record reveals that the trial court did not engage in misconduct, nor did the alleged misconduct result in an innocent defendant's conviction.

Also, defendant asserts that his conviction for second-degree murder should be reversed because the trial court erroneously denied defendant's motion for a directed verdict of acquittal of first-degree murder. Defendant says that the prosecution did not introduce sufficient evidence of premeditation and deliberation. The trial court did not err when it denied defendant's motion. Moreover, were we to conclude that the trial court erred, defendant has neither alleged that the charge of second-degree murder was improperly submitted to the jury nor asserted that the record contains "persuasive indicia of jury compromise." Therefore, any alleged error is harmless. *People v Moorer*, 246 Mich App 680, 682-683; 635 NW2d 47 (2001), citing *People v Graves*, 458 Mich 476, 486, 488; 581 NW2d 229 (1998). As stated by our Supreme Court in *Graves*, *supra*, 486-487:

[A] defendant has no room to complain when he is acquitted of a charge that is improperly submitted to a jury, as long as the defendant is actually convicted of a charge that was properly submitted to the jury. Such a result squares with respect for juries. Further, not to adopt this view is to countenance a misuse of judicial resources by automatically reversing an otherwise valid conviction.

Defendant also says that the trial court erred by not awarding him 310 days credit against his sentence for time served in jail while he awaited trial and sentencing. A trial court must grant a defendant credit against that defendant's sentence for any time served in jail before sentencing as a result of their having been denied, or unable to furnish, bond.¹

¹ MCL 769.11b; *People v Johnson*, 205 Mich App 144, 146; 517 NW2d 273 (1994). MCL 769.11b is "remedial in nature and is to be liberally construed." *Id.*

Here, defendant committed the offenses while he was on parole. While on parole, defendant remained in the legal custody and under the control of the Department of Corrections. MCL 791.238(1). Upon violating his parole, defendant became “liable, when arrested, to serve out the unexpired portion of his . . . maximum imprisonment” for his previous offenses. MCL 791.238(2); *Johnson, supra* at 147. Our Supreme Court has determined that MCL 791.238(2) “requires the offender to serve at least the combined minimums of his sentences, plus whatever portion of the earlier sentence the Parole Board may, because the parolee violated the terms of parole, require him to serve.” *Wayne Co Prosecutor v Dep’t of Corrections*, 451 Mich 569, 571-572, 584; 548 NW2d 900 (1996). Because defendant was convicted of a felony while on parole from his previous offenses, the term of imprisonment imposed for the current offenses “begin[s] to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense[s],” thus making it consecutive. MCL 768.7a(2); *Johnson, supra* at 147. Therefore, because he had violated parole, credit for time spent in custody while awaiting trial and sentencing is to be applied to the unexpired portion of the sentence for which defendant was on parole, not to the sentence imposed for his current offenses. *People v Watts*, 186 Mich App 686, 687-689; 464 NW2d 715 (1991). Thus, because a parole violation charge was pending at the time defendant was sentenced, the trial court did not err in not crediting the jail time he served against the sentence imposed in the present case.

However, the record does not indicate whether the Parole Board did, in fact, require defendant to serve an additional portion of his previous sentence because of his parole violation and, if so, how much. Under Department of Corrections Policy Directive 06.06.100(U), defendant’s conviction and sentence is an automatic violation of his parole. Further, Directives 06.06.100(D) and 06.06.101(H) require that defendant be given credit for time spent in jail pending trial. However, if the Parole Board did not require defendant to serve an additional portion of his previous sentence because of his parole violation, then defendant must receive 310 days of credit against his current sentence under MCL 769.11b². Therefore, we remand this case to the trial court for a determination of whether defendant was required to serve an additional portion of his previous sentence.

Affirmed, but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Stephen L. Borrello

² Defendant is not, however, entitled to have the time credited against his current sentence if the Parole Board has required him to serve an additional portion of his previous sentence but has not credited his time in jail against that previous sentence in violation of the directives. This Court does not have jurisdiction to order that time be credited against a former sentence. Moreover, if the Department of Corrections has not credited the time against defendant’s former sentence, he may enforce his right to have them do so through other proceedings. *Watts, supra*, 687 n 1.