IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ROBERT EMMETT FOSTER, Appellant.	No. 42358-8-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — On March 10, 2011, the State charged Robert Foster with unlawful possession of a stolen vehicle (count I), and bail jumping (counts III, IV, V). RCW 9A.56.068; RCW 9A.76.170. A jury found Foster not guilty of possession of a stolen vehicle (count I), but guilty of three counts of bail jumping (counts III, IV, and V).[1] The judgment and sentence correctly indicate that the jury acquitted Foster of unlawful possession of a stolen vehicle, but the trial court mistakenly imposed a sentence of 90 days on count I, rather than on counts III, IV, and V. On appeal, Foster contends—and the State concedes—that the sentence was incorrectly imposed on count I. We remand to the trial court for correction of the clerical error.

[1] The State also charged Foster with third degree driving with a suspended license (count II), RCW 46.20.342(1)(c), but dismissed this charge prior to trial.

An error is clerical if the amended judgment corrects the language "to reflect the court's intention." *State v. Snapp*, 119 Wn. App. 614, 627, 82 P.3d 252, *review denied*, 152 Wn.2d 1028 (2004). To determine whether an error is clerical or judicial, we look to "'whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial.'" *Snapp*, 119 Wn. App. at 627 (quoting *Presidential Estates Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)). A court may correct a clerical mistake or scrivener's error at any time:

> "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e)."

State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121 (2011) (quoting CrR 7.8(a)).

Here, the judgment and sentence indicate a sentence imposed as to count I. Since the jury acquitted Foster of count I, this was error. The trial court clearly intended to sentence Foster to 90 days in jail because the jury found him guilty of bail jumping as per counts III, IV, and V: the trial court read the verdict forms aloud at trial and polled the jury as to each verdict. And, at sentencing, the trial court stated, "I'm going to sentence you to the first time offender. However, owing to your three felony convictions, I'm sentencing you to 90 days in jail." 6 Report of Proceedings at 284-85. Clearly, the trial court intended the 90-day sentence to apply to the three bail jumping convictions, not the unlawful possession of a stolen vehicle charge for which the jury acquitted Foster. This is a clerical error. Allowing the trial court to make a ministerial correction will not affect the substance of Foster's judgment or sentence. Accordingly, we remand to the

trial court to amend the judgment and sentence so that it reflects the sentence imposed on counts III, IV, and V.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

WORSWICK, A.C.J.