IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CHARLES M. RAY,

Appellant,

v.

Case No. 5D21-2235
LT Case No. 2008-CF-014423-A-O

STATE OF FLORIDA,

Appellee.
_____/

Opinion filed December 30, 2021

3.850 and 3.800 Appeal from the Circuit Court for Orange County, Luis Fernando Calderon, Judge.

Charles M. Ray, Live Oak, pro se.

Ashley Moody, Attorney General, Tallahassee, and Bonnie Jean Parrish, Assistant Attorney General, Daytona Beach, for Appellee.

LAMBERT, C.J.

Charles M. Ray appeals the postconviction court's order summarily denying his combined Florida Rule of Criminal Procedure 3.850 successive motion for postconviction relief and Florida Rule of Criminal Procedure

3.800(a) motion to correct illegal sentence. We affirm the order without further discussion, except for one issue. For the following reasons, we agree with Ray that the probation aspect of his sentence is illegal; and we therefore reverse that portion of the order.

Following trial, Ray was convicted, as charged, of a second-degree felony for aggravated battery with a firearm.[1] The jury made a separate finding in its verdict that, during the commission of this offense, Ray did actually possess and discharge a firearm that resulted in great bodily harm being inflicted upon the victim. As a result, the trial court sentenced Ray under Florida's 10-20-Life statute to serve a mandatory minimum of twenty-five-years' imprisonment.[2] The court also ordered that Ray's prison sentence be followed by five years of probation. Ray's direct appeal of the judgment was affirmed without opinion. *Ray v. State*, 85 So. 3d 501 (Fla. 5th DCA 2012).

In that part of his present motion seeking to correct an illegal sentence, Ray conceded that under *Mendenhall v. State*, 48 So. 3d 740, 743 (Fla. 2010), the trial court had the authority to impose the twenty-five-year

[1] Ray was also convicted on other charges that are not pertinent here.

[2] *See* § 775.087(2)(a)3., Fla. Stat. (2008).

mandatory minimum prison sentence, despite the sentence otherwise exceeding the statutory maximum penalty of fifteen years for his second-degree felony conviction.[3] Ray challenges the part of his sentence that imposed the subsequent five years of probation, contending that it is illegal and should be stricken.

In denying Ray's motion, the postconviction court held that under the 10-20-Life statute, since the trial court could have imposed a maximum sentence of up to life in prison, the five years of probation following Ray's twenty-five-year mandatory minimum prison term, resulting in an aggregate penalty of thirty years, was necessarily legal.

This analysis, however, was rejected by this court in *Wooden v. State*, 42 So. 3d 837, 837 (Fla. 5th DCA 2010), *approved in Hatten v. State*, 203 So. 3d 142 (Fla. 2016). In *Wooden*, the defendant was convicted of a first-degree felony. *Id.* The trial court imposed a fifty-year prison sentence and, based on the jury's separate findings that the defendant possessed and discharged a firearm during the commission of the crime resulting in great bodily harm to the victim, included a twenty-five-year mandatory minimum term under the 10-20-Life statute. *Id.* The defendant moved for relief under rule 3.800(a), contending that any portion of his sentence exceeding the

[3] *See* § 775.082(3)(c), Fla. Stat. (2008).

thirty-year statutory cap for a first-degree felony[4] was illegal. *Id.* The postconviction court denied the motion, which the defendant appealed. *Id.*

This court reversed the order. *Id.* We held that while the trial court had the initial discretion under the statute to impose a mandatory minimum sentence of twenty-five years up to life imprisonment, once it selected a mandatory minimum prison term of twenty-five years, it could not thereafter exceed the thirty-year maximum penalty for a first-degree felony. *Id.; see also Hatten*, 203 So. 3d at 146. In so holding, we explained that Florida's 10-20-Life statute does not separately create a new statutory maximum penalty of life imprisonment for crimes in which 10-20-Life sentencing applies. *Id.*

Subsequently, in *Wynn v. State*, 277 So. 3d 281 (Fla. 5th DCA 2019), we addressed a scenario almost identical to the present case. The defendant there was also convicted of the second-degree felony of aggravated battery with a firearm. *Id.* at 282. The trial court sentenced the defendant to serve thirty years in prison, with a twenty-five-year mandatory minimum term imposed under the 10-20-Life statute. *Id.*

Following an unsuccessful direct appeal, the defendant filed a motion under rule 3.800(a) to correct an illegal sentence, arguing that his additional

[4] *See* § 775.082(3)(b), Fla. Stat.

five years in prison, over and above the twenty-five-year mandatory minimum prison sentence, were illegal because the sentence exceeded the fifteen-year statutory maximum penalty for a second-degree felony. *Id.* The postconviction court denied the motion. *Id.*

On appeal, we agreed with the defendant and reversed the order. *Id.* at 283. We specifically held that, under *Wooden*, once the trial court imposed the twenty-five-year mandatory minimum sentence, that portion of the defendant's sentence for the second-degree felony that exceeded this mandatory minimum sentence was illegal. *Id.* We remanded with directions to correct the defendant's sentence on his conviction for aggravated battery with a firearm to show just the twenty-five-years' mandatory minimum imprisonment. *Id.*

Here, the sentencing documents reflect that Ray, like the defendant in *Wynn*, was convicted of a second-degree felony. Additionally, as in *Wynn*, there is no statutory authority that permitted the trial court to impose a sentence for the aggravated battery with a firearm conviction in excess of the twenty-five-year mandatory minimum prison sentence. Accordingly, we reverse that portion of the order finding the five-year term of probation to be lawful, and we remand with directions for an amended judgment and

sentence to be entered that removes or strikes this term of probation. Ray does not need to be present for this ministerial correction.

AFFIRMED, in part; REVERSED, in part; REMANDED with directions. HARRIS and SASSO, JJ., concur.