

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

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

CASE NO. 1D11-2301

JOSEPH PATRICK
SCHUMACHER,

Appellee.

_____ /

Opinion filed October 31, 2012.

An appeal from the Circuit Court for Okaloosa County.
John T. Brown, Judge.

Pamela Jo Bondi, Attorney General, and Brooke Poland and Trisha Meggs Pate,
Assistant Attorneys General, Tallahassee, for Appellant.

Ashley Smith Herndon of Dewrell & Herndon, Shalimar, for Appellee.

WOLF, J.

The State of Florida appeals from a sentence imposed on appellee, Joseph Schumacher, after his conviction for DUI manslaughter. The State asserts that the sentence is illegal because it does not include a minimum mandatory prison sentence of four years. We agree and remand for resentencing to include the minimum mandatory term.

On February 4, 2011, appellee was convicted by a jury of DUI manslaughter. The trial court conducted a sentencing hearing on April 25, 2011. The court adjudicated appellee guilty and sentenced him to two years of community control, followed by eight years of probation that included a number of special conditions. The State timely appealed.

Section 316.193(3), Florida Statutes (2009), states, “A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment for 4 years.”

The legislative language is unambiguous. The sentence imposed is, therefore, illegal. See State v. Strazdins, 890 So. 2d 334, 335 (Fla. 2d DCA 2004) (“When a trial court imposes a sentence that is shorter than the required mandatory minimum sentence, ‘the sentence is not within the limits prescribed by law and is properly viewed as an ‘illegal’ sentence.’” (quoting State v. R.F., 648 So. 2d 293, 294 n.1 (Fla. 3d DCA 1995))). We remand for resentencing.

REVERSED and REMANDED.

VAN NORTWICK and LEWIS, JJ., CONCUR.