

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

PATRICK SWEENEY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D13-3427

[May 7, 2014]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lisa Porter, Judge; L.T. Case No. 91-018941 CF10A.

Patrick Sweeney, South Bay, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Appellant Patrick Sweeney appeals a trial court order denying his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a), which did not correct an apparent scrivener's error. The record demonstrated a scrivener's error in the citation to section 775.0823, Florida Statutes (1991), in appellant's written sentence, when the correct statute was section 775.0825. The State's response filed in the trial court conceded that the court should correct the statute number on appellant's sentence. The trial court previously amended the judgment of conviction to reflect the correct statutory citation, but did not amend the sentence to correct the error.

Insofar as this is an instance of a scrivener's error in appellant's sentence, rather than a judicial determination or error, we affirm the trial court's order denying the motion to correct illegal sentence. *See Betts v. State*, 128 So. 3d 158 (Fla. 2d DCA 2013). However, we also remand with directions that the error be corrected in appellant's sentence. Appellant's

presence is not required for this correction. *Williams v. State*, 697 So. 2d 584 (Fla. 4th DCA 1997).

Affirm; remand to correct scrivener's error in appellant's sentencing.

TAYLOR, LEVINE and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.