

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

DANIEL JOSEPH LEARY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-25

[May 7, 2008]

DAMOORGIAN, J.

Appellant, Daniel Leary, appeals his conviction and thirty-year sentence for aggravated battery with a firearm. We affirm the conviction and reverse the thirty-year sentence as illegal because it exceeds the statutory maximum for a second degree felony. *Collazo v. State*, 966 So. 2d 429 (Fla. 4th DCA 2007).

Leary was charged by information with the second degree felony of aggravated battery with a firearm and/or resulting in great bodily harm under section 784.045, Florida Statutes (2002). The information further provided a violation of the “10-20-Life” statute for discharging the weapon. Fla. Stat. § 775.087(2)(a)1-3(2002).

Leary pleaded guilty and was sentenced to thirty years with twenty-five years mandatory minimum. Thereafter, Leary filed a motion to withdraw his plea. The motion was denied. We find no error in the trial court’s ruling on the motion to withdraw the plea and affirm the judgment.

Appellant also filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). The trial court also denied that motion. Appellant was convicted and sentenced under the “10-20-Life” statute, requiring a twenty-five year mandatory minimum for discharging a firearm during the commission of the second degree felony, aggravated battery with a firearm resulting in great bodily injury. Fla. Stat. §§ 784.045(1)(a)1-2, 775.082(3)(c)(2002). The trial court sentenced him to thirty years with twenty-five years mandatory minimum although

the maximum penalty for a second degree felony is fifteen years. Appellant argues, and we agree, that although the twenty-five year mandatory minimum is not illegal, the thirty-year sentence is illegal under our recent holding in *Collazo v. State*, 966 So. 2d 429 (Fla. 4th DCA 2007). Accordingly, we reverse and remand for re-sentencing consisting with our holding in *Collazo, surpa*.

Affirmed in Part, Reversed in Part, and Remanded.

SHAHOOD, C.J., and HAZOURI, J., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Krista Marx, Judge, and Hubert Lindsey, Senior Judge; L.T. Case No. 02-8631 CFA02.

Stephen P. Tourtelot of The Daley Law Office, P.A., Tallahassee, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing