

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

RICHARD ANDREWS,

Appellant,

v.

Case No. 5D19-1344

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 20, 2019

Appeal from the Circuit Court
for Brevard County,
Robin C. Lemonidis, Judge.

James S. Purdy, Public Defender, and
Andrew Mich, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Appellee.

LAMBERT, J.

In 1990, Richard Andrews tendered a nolo contendere plea to charges of burglary of a dwelling with battery, sexual battery with force likely to cause serious injury, robbery, and aggravated battery. The trial court sentenced Andrews to serve life imprisonment for

the burglary of a dwelling with battery conviction and to lesser, but lengthy, prison sentences on the remaining counts, with all sentences running concurrently.

Andrews did not file a direct appeal. Over the ensuing decades, he has filed a number of postconviction motions under Florida Rule of Criminal Procedure 3.800(a) challenging the legality of his sentences. In 2018, the trial court granted Andrews partial relief on such a motion pertaining to the burglary of a dwelling with battery conviction. The court, thereafter, without a hearing, reimposed the life imprisonment sentence for this conviction.

Andrews appealed, arguing that the trial court erred by failing to conduct a de novo resentencing proceeding prior to reimposing the life term. Because the partial relief granted to Andrews on his rule 3.800(a) motion affected the sentence points on his scoresheet, the trial court, under the sentencing guidelines in effect at the time of his offense, had the discretion on resentencing to impose other than a life sentence. Accordingly, we agreed with Andrews's argument and reversed for the trial court to hold a full resentencing hearing in which Andrews would be represented by counsel. *Andrews v. State*, 264 So. 3d 303, 304 (Fla. 5th DCA 2019).

Following this resentencing hearing mandated by our previous opinion, the trial court again imposed the life sentence on the burglary of a dwelling with battery conviction. The amended sentencing documents entered by the trial court, however, show that the court also separately "resentenced" Andrews on his other three convictions, nunc pro tunc to the date that the original judgment and these three sentences were imposed in 1990. This 2019 amended judgment and sentence "committed [Andrews] to the custody of the Department of Corrections" for the respective term of years that had been previously

imposed on him on each of these three counts more than twenty-nine years ago. Andrews has timely appealed the amended judgment and sentences.

We affirm, without further discussion, the resentence of life imprisonment for the burglary of a dwelling with battery conviction. For the following reasons, we reverse and remand with directions that the trial court vacate that portion of its most recent written amended judgment and sentence that resents Andrews on his other three convictions. First, our prior opinion did not direct that Andrews be resented on these counts. Second, it is undisputed that Andrews had already completed these three sentences. A defendant “cannot be resented on offenses for which the defendant’s prison term has expired.” See *Ellis v. State*, 913 So. 2d 1255, 1257 (Fla. 2d DCA 2005) (citing *Willingham v. State*, 833 So. 2d 237, 238 (Fla. 4th DCA 2002)).

AFFIRMED, in part, REVERSED, in part, and REMANDED with directions.

EDWARDS and SASSO, JJ., concur.