

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

TRACI GROSVENOR,

Appellant,

v.

Case No. 5D20-1013

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 11, 2020

3.800 Appeal from the Circuit
Court for Sumter County,
William H. Hallman, III, Judge.

Traci Grosvenor, Brooksville, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

ON MOTION FOR REHEARING

PER CURIAM.

We grant Traci Grosvenor's motion for rehearing, withdraw our per curiam
affirmance and substitute the following in its place.

Grosvenor challenges the trial court's denial of her Florida Rule of Criminal
Procedure 3.800(a) motion to correct an illegal sentence. Pursuant to her negotiated plea
of nolo contendere, Grosvenor was sentenced to life imprisonment for first-degree murder

and attempted first-degree murder of a law enforcement officer, fifty years in prison for attempted first-degree murder with a firearm and robbery with a firearm, and five years in prison for resisting arrest with violence, all running concurrently. Grosvenor argues, in part, that her fifty-year prison sentence for attempted first-degree murder with a firearm is illegal because it exceeds the statutory maximum for a life felony. We agree.

Grosvenor committed the attempted first-degree murder with a firearm in 1989. That offense is normally a first-degree felony punishable by a maximum sentence of 30 years. See §§ 775.082(3)(b), 777.04(4)(a), Fla. Stat. (1989). However, because Grosvenor used a firearm in the commission of the offense, the offense was reclassified to a life felony. See Id. § 775.087(1)(a). At that time, the penalty for a life felony was a sentence of life in prison or “a term of imprisonment not exceeding 40 years.”¹ Id. § 775.082(3)(a). Accordingly, the fifty-year sentence imposed for the attempted first-degree murder with a firearm conviction exceeds that statutory maximum, and is illegal, even if Grosvenor agreed to it as part of her plea.² See Sterling v. State, 584 So. 2d 626, 627

¹ Due to a statutory anomaly, a person convicted of a life felony on or after October 1, 1983, but before July 1, 1995, was punishable “by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years,” even though a defendant convicted of a first-degree felony punishable by life could receive a sentence exceeding forty years. § 775.082(3)(a)2., Fla. Stat. (1997); see Landry v. State, 61 So. 3d 1160, 1161 n.1 (Fla. 5th DCA 2011); Ferguson v. State, 804 So. 2d 411, 412 (Fla. 4th DCA 2001); see also Sterling, 584 So. 2d at 627 (pointing out statutory anomaly that permitted trial courts greater sentencing flexibility with first-degree felonies than with life felonies). Defendants who commit life felonies after July 1, 1995, may be sentenced to a term of imprisonment for life or for a term of years not exceeding life imprisonment. § 775.082(3)(a)3., Fla. Stat. (1997).

² Grosvenor’s fifty-year sentence for the robbery with a firearm conviction is a legal sentence. Robbery is a second-degree felony. § 812.13(2)(c), Fla. Stat. (1989). However, “[i]f in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment.” Id. § 812.13(2)(a); see Muyico v. State,

(Fla. 2d DCA 1991) (explaining sentence for attempted murder of forty-five years in prison followed by thirty years of probation was illegal because it exceeded statutory maximum); see also Owens v. Flowers, 286 So. 3d 346, 347 (Fla. 5th DCA 2019) (holding that although defendant agreed to probation as part of plea, probationary term of sentence for second-degree murder with firearm was illegal as it exceeded statutory maximum); Ramos v. State, 931 So. 2d 1023, 1024 (Fla. 3d DCA 2006) (reversing denial of rule 3.800(a) motion where “fifty-year sentences were illegal with respect to the life felonies to which he pled guilty”); Dyer v. State, 629 So. 2d 285 (Fla. 5th DCA 1993) (holding that fifteen-year term of incarceration followed by life probation exceeded forty-year statutory maximum for life felony); Taylor v. State, 573 So. 2d 173, 174 (Fla. 5th DCA 1991) (stating because trial court elected to sentence defendant to forty years for life felony, trial court could not impose sentence exceeding forty years).

Accordingly, this sentence alone must be reversed and the matter corrected. Otherwise, we affirm.

REVERSED, IN PART, and REMANDED.

ORFINGER, COHEN and EISNAUGLE, JJ., concur.

50 So. 3d 1227 (Fla. 4th DCA 2011) (denying rule 3.800(a) motion raising claim of improper reclassification of robbery with firearm to life felony, but remanding for correction of judgment to reflect that offense was first-degree felony punishable by life).