

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

RAMON MARQUEZ-GONZALEZ,

Appellant,

v.

Case No. 5D19-3427

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 28, 2021

Appeal from the Circuit
Court for Orange County,
Gail A. Adams, Judge.

W. Charles Fletcher, of Law Office of
W. Charles Fletcher, Jacksonville, for
Appellant.

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

EDWARDS, J.

Ramon Marquez-Gonzalez appeals the judgment of conviction and
sentence imposed following trial. Appellant was convicted and adjudicated

guilty of six counts relating to an early-morning shooting on July 9, 2018, at an Orange County bar. Because it is clear to us that Appellant's sentence was the result of a misapprehension of the sentencing statute, we reverse and remand for Appellant to receive a new sentencing hearing. We affirm the judgment adjudicating Appellant guilty on all counts and the consecutive sentence imposed as to count 6.

Appellant was tried on six separate counts relating to the shooting, including second-degree murder (count 1), four counts of attempted second-degree murder (counts 2–5), and shooting at, within, or into a building (count 6). After a lengthy trial, the jury returned a verdict finding Appellant guilty, and the trial court adjudicated Appellant guilty on each of these counts.

Appellant's sentencing hearing took place on November 6, 2019. At that hearing, there was disagreement between the parties as to whether the 10-20-Life statute, section 775.087(2)(d), Florida Statutes (2019), required Appellant to be sentenced to consecutive prison terms with regard to counts 1–5, the second-degree murder and attempted second-degree murder charges. The trial court indicated that it read section 775.087(2)(d) to require that Appellant be sentenced to serve his prison terms consecutively rather than concurrently, and proceeded to sentence him accordingly.

Appellant then filed a motion to correct sentencing error on July 2, 2020 under Florida Rule of Criminal Procedure 3.800(b)(2). Appellant argued in his motion that the trial court had misunderstood section 775.087(2), that the statute permitted but did not require consecutive sentences when multiple acts took place contemporaneously, and that only his imprisonment for count 6 was required to be served consecutively. Appellant asked to be resentenced on counts 1–5.

The sentencing court belatedly granted this motion in a September 8, 2020 order, which scheduled a date for Appellant to be resentenced. However, that order was determined to have been void because it was entered more than sixty days after the motion to correct sentencing error was filed. See *Sessions v. State*, 907 So. 2d 572, 573 (Fla. 1st DCA 2005) (“A 3.800(b)(2) motion is deemed denied, and the trial court's jurisdiction ends, once 60 days elapse without rendition of an order ruling on the motion, and any order rendered more than 60 days after a rule 3.800(b)(2) motion is filed is a nullity.”).

Appellant now asserts the same claim on appeal and, commendably, the State concedes error. We agree that Appellant is entitled to be resentenced with regard to counts 1–5 as each of these charges arose from Appellant’s contemporaneous acts at the bar. See *Williams v. State*, 186

So. 3d 989, 992–94 (Fla. 2016) (holding that “Nothing within paragraph (2)(d)’s plain language also requires . . . a qualifying felony sentence to run consecutively to another qualifying felony sentence,” and “under the plain language of section 775.087(2)(d), consecutive mandatory minimum sentences are not required, but are permissible, if the sentences arise from a single criminal episode”). “Where the record indicates that a trial court believed that consecutive minimum mandatory sentences were required rather than permissible under section 775.087, reversal for resentencing is required.” *Edwards v. State*, 252 So. 3d 356, 358 (Fla. 5th DCA 2018) (citing *James v. State*, 244 So. 3d 1142 (Fla. 2d DCA 2018); *Mason v. State*, 210 So. 3d 120, 121 (Fla. 2d DCA 2016)).¹

Appellant also makes several arguments challenging the admission of a plea agreement into evidence, challenging the admission of testimony made by a detective at trial, and arguing that the trial court committed fundamental error by allegedly abandoning neutrality below. After careful consideration, we find those arguments lack merit; thus, we affirm Appellant’s judgment of conviction on all counts and the consecutive sentence imposed for count 6. We remand for Appellant to receive a new

¹ Appellant concedes on appeal that count 6 is legally required to be imposed consecutively.

sentencing hearing where the trial court may exercise its discretion to impose consecutive or concurrent sentences with regard to counts 1-5.

AFFIRMED, in part; REVERSED, in part; and REMANDED, with instructions.

WALLIS and SASSO, JJ., concur.