

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

JEROME ROBINSON,

Appellant,

v.

Case No. 5D20-2337

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 23, 2021

Appeal from the Circuit Court for Marion
County, Anthony M. Tatti, Judge.

Matthew J. Metz, Public Defender, and George
D.E. Burden, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee,
and Roberts J. Bradford, Jr., Assistant Attorney
General, Daytona Beach, for Appellee.

HARRIS, J.

In February 2015, Jerome Robinson was sentenced to 36 months in
the Department of Corrections (DOC) followed by 2 years of drug offender
probation for trafficking in oxycodone, an offense that occurred in June 2011.

Following his release from prison, Robinson allegedly violated his probation, in part, by committing a series of new law violations.

In October 2020, Robinson admitted to violating probation by his arrest and conviction in two other cases. The court entered a written order revoking Robinson's probation and sentenced him to 30 years in DOC. Robinson now appeals his judgment and sentence, arguing that the trial court should have treated his underlying offense as a third-degree felony based on an amendment to the trafficking statute that occurred between the date of his offense and the date of his probation revocation. We find that the trial court properly sentenced Robinson and affirm.

At the time of Robinson's original judgment and sentence, the minimum trafficking weight of oxycodone was defined as 4 grams or more but less than 30 kilograms. § 893.135(1)(c)1., Fla. Stat. (2010). This is the crime for which Robinson was originally sentenced. The Florida Legislature subsequently amended the statute, and at the time Robinson admitted to violating his probation, the minimum trafficking weight of oxycodone was increased to 7 grams or more. § 893.135(1)(c)3., Fla. Stat. Robinson argued that because the statute changed while he was on probation, his original offense should now be treated as third-degree felony possession.

Section 775.022, Florida Statutes, provides in pertinent part:

(3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5), the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

(a) The prior operation of the statute or a prosecution or enforcement thereunder.

(b) A violation of the statute based on any act or omission occurring before the effective date of the act.

(c) A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

(4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, **if not already imposed**, must be imposed according to the statute as amended.

§ 775.022, Fla. Stat. (2019) (emphasis added).

At the time Robinson was originally sentenced for trafficking oxycodone, his offense was a first-degree felony. Because Robinson's judgment and sentence were already imposed prior to both the amendment to section 893.135 and section 775.022, he cannot take advantage of section 775.022(4). See Stapleton v. State, 286 So. 3d 837 (Fla. 5th DCA 2019).

Upon revocation of a defendant's probation, the court must impose any sentence which it might have ordinarily imposed. § 948.06(2)(e), Fla. Stat. ("If

such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.”). The trial court’s decision to apply the criminal statute in effect at the time Robinson was adjudicated and placed on probation was correct. Robinson’s sentence is legal and is affirmed in all respects.

However, the most recent judgment and sentence reflects that Robinson was originally convicted of “TRAFFIC IN OXYCODONE 7G OR MORE BUT LESS THAN 14G.” This is a scrivener’s error, as he was originally convicted of trafficking in oxycodone 4 grams or more but less than 14 grams. While we affirm the judgment and sentence, we remand for correction of the scrivener’s error on the judgment to reflect the correct offense. See Johnson v. State, 84 So. 3d 452 (Fla. 5th DCA 2012) (remanding to correct scrivener’s error where jury convicted defendant of attempted robbery with a firearm, but judgment reflected a conviction for robbery with a firearm).

AFFIRMED; REMANDED

EDWARDS and NARDELLA, JJ., concur.