

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

KENNETH SLANKER,

Appellant,

v.

Case No. 5D20-2373
LT Case No. 2019-CF-133

STATE OF FLORIDA,

Appellee.

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Opinion filed December 3, 2021

Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Matthew J. Metz, Public Defender, and Ali L.
Hansen, Assistant Public Defender, Daytona
Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee,
and Kaylee D. Tatman, Assistant Attorney
General, Daytona Beach, for Appellee.

HARRIS, J.

The State charged Kenneth Slanker by information with three counts
of sexual battery on a child less than twelve years old in violation of sections

794.011(1)(h) and (8)(c), Florida Statutes (2019) (counts one through three), and three counts of sexual battery on a child older than twelve but younger than eighteen years old in violation of sections 794.011(1)(h) and (8)(b), Florida Statutes (2019) (counts four through six). Following trial, the jury found Slanker guilty as charged on all six counts with a special finding that, as to counts one through three, the victim was less than twelve years of age, and as to counts four through six, the victim was between the ages of twelve and eighteen. The court adjudicated Slanker guilty on all six counts, and at sentencing, the court orally imposed consecutive sentences of life without parole as to counts one through three and life imprisonment as to counts four through six.

In this Anders¹ appeal, we find several errors that appear on the face of the record that require remand to the trial court. The primary issue that must be addressed on remand pertains to counts four through six. Although the court's oral adjudication of guilt as to those counts was accurate, the written judgment differs from the oral pronouncement and the jury verdicts in that it adjudicates Slanker guilty of the wrong crimes. Contrary to the jury's verdict forms and the court's oral pronouncement of sentence, the written judgment erroneously adjudicated Slanker guilty of *six* counts of sexual

¹ Anders v. California, 388 U.S. 924 (1967).

battery on a child *less than twelve years old*, rather than *three* counts of that offense and *three* counts of sexual battery on a child *between twelve and eighteen years of age*. Remand is necessary to correct the written judgment as to counts four through six to accurately reflect the jury's verdict on those counts, finding Slanker guilty as charged of sexual battery on a child *between twelve and eighteen years of age*, in violation of section 794.011(8)(b). See Finkel v. State, 52 So. 3d 828, 828–29 (Fla. 4th DCA 2011); Miller v. State, 764 So. 2d 640, 645 (Fla. 1st DCA 2000).

In addition, the actual written sentences imposed as to counts four through six differ from the sentences orally imposed for those counts. At the sentencing hearing, the trial court imposed a sentence of life without parole as to counts one through three and a sentence of life imprisonment as to counts four through six. The written sentence mistakenly imposed consecutive sentences of life in prison without the possibility of parole on all six counts. We therefore remand this case with instructions to amend to conform to the oral pronouncement of life imprisonment—not life without parole—on counts four through six.

Finally, we note that the trial court orally imposed costs of incarceration in the amount of \$50 per day. However, in the written costs order, it imposed a flat cost of incarceration of \$250,000. The cost order cited to section

960.293, Florida Statutes (2019), which governs the imposition of costs of incarceration. The statute contemplates that a trial court will impose such costs according to the degree of the offense of which the defendant has been convicted. If a defendant is convicted of a capital or life felony, as Slanker was, a liquidated amount of \$250,000 applies. § 960.293(2)(b), Fla. Stat. (2019). If the defendant is convicted of any other degree of crime, the applicable amount is \$50 per day for each day of his incarcerative sentence. § 960.293(2)(a), Fla. Stat. (2019).

This Court has held that it is improper to impose costs of incarceration both in the amount of \$50 per day pursuant to section 960.293(2)(a) and in the amount of \$250,000 pursuant to section 960.293(2)(b). See Wilson v. State, 957 So. 2d 683, 686 (Fla. 5th DCA 2007). We cannot determine from the record the amount of incarceration costs that the trial court intended to assess. We therefore decline at this time to resolve the conflict between the oral and written cost of incarceration. As we have previously held, “[a] motion filed pursuant to [Florida Rule of Criminal Procedure] 3.800(a) is the proper vehicle to address a discrepancy between the oral pronouncement and the written sentence.” Webb v. State, 302 So. 3d 1077, 1079 (Fla. 5th DCA 2020) (citing Mallon v. State, 939 So. 2d 198, 199 n.1 (Fla. 5th DCA 2006); Harris v. State, 160 So. 3d 523, 523 (Fla. 5th DCA 2015)). Slanker may file a Rule

3.800(a) motion to address the discrepancy in the oral and written cost of incarceration imposed.

REVERSED and REMANDED with instructions.

EDWARDS and EISNAUGLE, JJ., concur.