

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2007

MICHELLE DAVIS,

Appellant,

v.

Case No. 5D05-3124

STATE OF FLORIDA,

Appellee.

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Opinion filed August 10, 2007

Appeal from the Circuit Court
for Orange County,
Jose R. Rodriguez, Judge.

James S. Purdy, Public Defender, and
Susan A. Fagan, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Appellee.

MONACO, J.

The appellant, Michelle Davis, seeks by this appeal to have the judgment and sentence rendered by the trial court corrected to reflect accurately the terms of her negotiated plea. The State agrees, as do we.

Ms. Davis pled guilty to a charge of kidnapping in exchange for a ten-year prison sentence. The parties stipulated that she did not possess a firearm during the

commission of the offense. The judgment and sentence has already been corrected a number of times. Unfortunately, however, it still reflects that Ms. Davis was convicted of kidnapping with a firearm. Additionally, the judgment incorrectly designates the kidnapping offense to which she pled as a life felony, rather than a first degree felony punishable for a term of years not exceeding life. See § 787.01(2), Fla. Stat. (2003). Although the trial court apparently ordered the judgment and sentence to be corrected, it still reads incorrectly.

Accordingly, we reverse the judgment, affirm the sentence of 10 years incarceration, and remand the matter to the trial court for correction of the judgment in accordance with the plea agreement and this opinion. As this amounts to the correction of a scrivener's error, Ms. Davis need not be present when this is accomplished. See *Firsher v. State*, 834 So. 2d 921 (Fla. 3d DCA), *review denied*, 859 So. 2d 514 (Fla. 2003).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SAWAYA and LAWSON, JJ., concur.