

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

GARY H. KENT,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D10-5339

STATE OF FLORIDA,  
Appellee.

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Opinion filed August 31, 2012.

An appeal from the Circuit Court for Wakulla County.  
Hon. N. Sanders Sauls, Judge.

Jeffrey E. Lewis, Regional Conflict Counsel, and Sheila Callahan, Assistant  
Regional Conflict Counsel, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Assistant Attorney  
General, and Joshua Heller, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Gary Kent appeals his conviction and sentence for possession of a firearm  
by a convicted felon, possession of cannabis, and tampering with physical  
evidence. We affirm Appellant's conviction without comment as to the felon-in  
possession and tampering charges, and with reference to State v. Adkins, 37 Fla. L.

Weekly S449 (Fla. July 12, 2012), as to the cannabis charge, but reverse to correct minor errors in Appellant's sentence.<sup>1</sup>

Appellant first argues that the oral sentence does not conform to the written sentence as to the amount of time served. Where the oral pronouncement and the written sentence do not agree, the oral pronouncement controls. Williams v. State, 957 So. 2d 600, 603 (Fla. 2007). Here, the record indicates the trial court pronounced 646 days' credit for time served, while the written sentence included credit for only 640 days. We therefore reverse and remand for correction of the written sentence.

Appellant next argues that the lump-sum imposition of discretionary fines and costs was erroneous. While mandatory costs may be imposed in a lump-sum amount, discretionary fines must be orally imposed. Bryant v. State, 47 So. 3d 952 (Fla. 2d DCA 2010). We therefore reverse the imposition of the \$1,000 fine and attendant five percent surcharge and \$20 court cost.

AFFIRMED in part, REVERSED in part, and REMANDED.

WOLF, RAY, and MAKAR, JJ., CONCUR.

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<sup>1</sup> Appellant moved for correction of the sentence under Florida Rule of Criminal Procedure 3.800, but the trial court failed to rule on the motion within 60 days. Thus, the motion was deemed denied. Fla. R. Crim. P. 3.800(b)(2). Though the trial court belatedly ruled on the motion, the ruling was a nullity, as the 60-day time period had expired. Waters v. State, 916 So. 2d 27, 28 (Fla. 1st DCA 2005).