

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-3009

JAMES DANIEL JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Linda McCallum, Judge.

April 20, 2018

PER CURIAM.

Appellant challenges the denial of two motions to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We reverse for further proceedings on Appellant's argument that the written judgment conflicted with the oral pronouncement of his sentence. As to the remaining claims in both motions, we affirm.

Appellant's September 10, 2014 motion argued that the trial judge did not orally pronounce a 10-year mandatory minimum sentence as a habitual violent felony offender (HVFO), although such a sentence was discussed during the sentencing hearing. Appellant claimed that the written judgment reflected the minimum mandatory sentence without its having been orally

pronounced, in violation of *Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003) (adhering to “long-standing principle of law—that a court’s oral pronouncement of sentence controls over the written document”).

The trial court attached several records to its unelaborated order denying Appellant’s 3.800(a) motion, concluding that the attached records refuted all of Appellant’s claims. The records attached to the order confirm that Appellant was placed on notice of the state’s intent to seek HVFO enhancement with a ten-year minimum-mandatory sentence, and that the written judgment included such a sentence. The records do not, however, include any transcripts of the sentencing hearing, and we are unable to determine if any such transcripts exist. Without any evidence of what the trial judge orally pronounced at sentencing, we are unable to conclude that Appellant’s claim is meritless. We therefore reverse the denial of this claim and remand for the lower court to determine whether the court file contains sentencing transcripts to resolve this claim. *See Taylor v. State*, 145 So. 3d 948, 949 (Fla. 1st DCA 2014) (citing *Williams v. State*, 957 So. 2d 600, 603 (Fla. 2007)). If not, Appellant’s motion should be denied without prejudice to his filing an amended motion attaching the sentencing transcripts. *See id.*

REVERSED in part and AFFIRMED in part.

ROBERTS, KELSEY, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

James Daniel Jones, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Michael McDermott, Assistant Attorney General, Tallahassee, for Appellee.