

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3620

STATE OF FLORIDA,

Appellant,

v.

VALDASE L. BARNHART,

Appellee.

No. 1D19-3666

VALDASE L. BARNHART,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Francis Allman, Judge.

December 21, 2020

PER CURIAM.

Valdase Barnhart was charged with one count of fraudulent use of personal identification information and one count of grand theft. She was found guilty on both counts and a jury unanimously agreed that the State had proven beyond a reasonable doubt that the amount of the fraud perpetrated was \$5,000 or more. A conviction on the count of fraudulent use of personal information requires the imposition of a three-year term of incarceration. *See* § 817.568(2)(b), Fla. Stat. (2020). At the sentencing hearing, the trial court adjudicated Barnhart guilty of both counts, but held the imposition of the three-year minimum mandatory sentence in abeyance.

Barnhart now appeals the trial court’s denial of her motion for judgment of acquittal; the State appeals the trial court’s withholding of imposition of sentence on the count of fraudulent use of personal information. We affirm as to Barnhart’s appeal, but reverse and remand for resentencing as to the State’s appeal.

By statute, for any person convicted of fraudulent use of personal identification, “the court shall sentence any person convicted of committing the offense . . . to a mandatory minimum sentence of 3 years’ imprisonment.” § 817.568(2)(b), Fla. Stat. As the Legislature has prescribed a three-year mandatory minimum, the trial court had no authority to do otherwise. *See State v. Kremer*, 114 So. 3d 420, 421 (Fla. 5th DCA 2013) (“mandatory minimum sentencing enhancements are nondiscretionary and, therefore, trial courts lack the authority to refuse to apply them”).

Accordingly, we remand for resentencing to include the mandatory minimum term.

MAKAR, OSTERHAUS, and NORDBY, JJ., concur.

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

Ashley Moody, Attorney General, and Steven Edward Woods and Robert Quentin Humphrey, Assistant Attorneys General, Tallahassee, for the State of Florida.

Andy Thomas, Public Defender, and M. J. Lord, Megan Lynne Long, and John E. Villafrate, Assistant Public Defenders, Tallahassee, for Valdase L. Barnhart.