

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1771

ANDRE HARRIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Hamilton County.
David W. Fina, Judge.

October 6, 2021

PER CURIAM.

In his direct criminal appeal, Appellant raises three issues of trial court error. We reject his arguments on the first two issues without comment, but we reverse and remand for resentencing on his third issue and the State's concession of error.

The jury found Appellant guilty of first-degree murder in count I and attempted armed robbery with a firearm in count II. The jury also found as to both counts that during the commission of the crime Appellant actually possessed a firearm, discharged the firearm, and the discharge of the firearm caused a death.

The trial court sentenced Appellant under section 775.087, Florida Statutes (2015), otherwise known as the 10-20-Life Statute. The court sentenced Appellant to "life in prison without

parole” for the murder and “life in prison on the attempted robbery and with a 25-year minimum mandatory sentence.”

Appellant challenges only the sentence on the attempted armed robbery. As the Florida Supreme Court has held, the sentence imposed was error. *See Hatten v. State*, 203 So. 3d 142, 145–46 (Fla. 2016). In *Hatten* the Court explained that once a trial court orders a minimum mandatory sentence under the 10-20-Life Statute, it exhausts its discretion and must have additional authority to impose any additional sentence. *Id.* at 146. Following the rule announced in *Hatten*, we reversed a sentence structured identically to Appellant’s sentence. *See Byrd v. State*, 238 So. 3d 917, 918 (Fla. 1st DCA 2018) (reversing sentence where court imposed, under 10-20-Life Statute, life imprisonment with a 25-year minimum mandatory; the life sentence was not minimum mandatory and no additional statutory authority existed to go beyond the 25-year minimum mandatory, 10-20-Life sentence).

Applying *Hatten* and *Byrd* here, once the trial court imposed its 25-year minimum mandatory, it needed additional authority to impose the life sentence. None appears to exist, and the State has conceded error on this point.

We therefore accept the State’s concession on the sentencing issue, and REVERSE and REMAND for resentencing only on count II consistent with *Hatten*. We otherwise AFFIRM Appellant’s judgment and sentences.

BILBREY, JAY, and NORDBY, JJ., concur.

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

Jessica J. Yeary, Public Defender, and Victor D. Holder, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.