

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-942

MARLON MCNEILL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

November 9, 2022

PER CURIAM.

The appellant was sentenced to thirty years in prison for his conviction for armed robbery with a weapon, a first-degree felony. That thirty-year sentence is a day-for-day, minimum sentence mandated by law because the appellant is a prison releasee reoffender (“PRR”). The trial court also adjudicated the appellant to be a habitual felony offender (“HFO”), but there was no extended-term sentence imposed as a result. In other words, the appellant was sentenced to the mandated thirty years’ imprisonment as a PRR, but he was not sentenced to any time beyond that thirty-year sentence because of the HFO designation, even though a higher sentence was authorized.

Now on review is the trial court's dismissal of the appellant's post-conviction motion that, in part, challenged the legality of the trial court's HFO adjudication. The State concedes error on this one point, and we agree. Because the appellant's sentence of thirty years in prison is coterminous with the mandatory minimum imposed on the appellant as a PRR, there has been no enlargement of the appellant's sentence based on the HFO adjudication. That makes the trial court's sentencing of the appellant as an HFO illegal. *See Grant v. State*, 770 So. 2d 655, 659 (Fla. 2000); *see also Daniels v. State*, 31 So. 3d 190 (Fla. 1st DCA 2009) (collecting cases). We in turn vacate in part the trial court's order dismissing the post-conviction motion, and we remand with an instruction that the trial court render an amended sentencing order that omits the HFO designation. Because this is a purely ministerial act, the appellant's presence is not required at a hearing prior to amending the sentencing order as instructed. We otherwise affirm the order on review.

AFFIRMED in part, VACATED in part, and REMANDED with instruction.

ROBERTS, WINOKUR, and TANENBAUM, JJ., concur.

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

Marlon McNeill, pro se, Appellant.

Ashley Moody, Attorney General, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Appellee.