

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PAUL ANTHONY CATALDO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D17-1446

[November 28, 2018]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Samantha Schosberg Feuer, Judge; L.T. Case No. 502015CF006127AXXXMB.

Carey Haughwout, Public Defender, and Benjamin Eisenberg, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Kimberly T. Acuña, Assistant Attorney General, West Palm Beach, for appellee.

KUNTZ, J.

Paul Anthony Cataldo appeals his conviction for battery on a person 65 years of age or older. We affirm without comment with one exception. Cataldo argues, and the State concedes, that the circuit court erred in denying his Florida Rule of Criminal Procedure 3.800(b)(2) motion to correct sentencing error.

Specifically, Cataldo argues there are three errors in the written order of probation:

- 1.) The order of probation incorrectly states that Cataldo entered a guilty plea when, in fact, he was convicted by jury;
- 2.) The order of probation refers to Cataldo's conviction on count one as "EVIDENCE OF PREJUDICE WHILE COMMITTING BATTERY ON PERSON 65 YEARS OF AGE

OR OLDER” when, in fact, the jury did not find evidence of prejudice; and

- 3.) The order of probation indicates a probationary period of “3 YEARS, CONCURRENT WITH COUNTS 1,2 – FIRST 6 MONTHS OF PROBATION TO BE SERVED ON COMMUNITY CONTROL II WITH A MONITOR” when, in fact, the court ordered one year of probation for count two.

The State concedes that these three errors should be corrected. Thus, we affirm Cataldo’s conviction and sentence but remand for the court to correct the three errors in the order of probation. Cataldo need not be present for the court’s entry of the corrected order of probation. *See Sirota v. State*, 977 So. 2d 700, 701 (Fla. 4th DCA 2008).

Affirmed and remanded for correction of order of probation.

TAYLOR and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.