

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**STATE OF FLORIDA,**  
Appellant,

v.

**NELSON MIRANDA,**  
Appellee.

No. 4D21-394

[September 15, 2021]

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; Robert F. Diaz, Judge; L.T. Case Nos. 20-6556TC10A and 20-000029AC10A.

Michael J. Satz, State Attorney, and Joanne Lewis, Assistant State Attorney, Fort Lauderdale, for appellant.

No appearance for appellee.

PER CURIAM.

The State appeals the sentence imposed by the trial court on appellee for his fourth driving while license suspended conviction (“DWLS”). It contends that the trial court failed to impose the mandatory ten-day jail sentence required under section 322.34(2)(b)2., Florida Statutes (2020). For the reasons stated in *State v. Moss*, No. 4D21-347 (Fla. 4th DCA Sept. 15, 2021) (issued this same date), we reverse, as the statute is clear and unambiguous, requiring a minimum sentence of ten days in jail. Contrary to the trial court’s statement, the application of the statute to this conviction is not an ex post facto violation. As in *Moss*, however, because appellee’s plea was based upon the trial court’s promised sentence, the trial court must first allow appellee to withdraw his plea. See *Goins v. State*, 672 So. 2d 30, 32 (Fla. 1996).

*Reversed and remanded for further proceedings in accordance with this opinion.*

CONNER, C.J., WARNER and GROSS, JJ., concur.

\* \* \*

***Not final until disposition of timely filed motion for rehearing.***