

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

MIGUEL FLORES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-1349

[April 20, 2011]

PER CURIAM.

We reverse the trial court's order denying appellant's Florida Rule of Criminal Procedure 3.800(a) motion to correct illegal sentence. The factual basis for the plea in this case did not establish actual possession of the firearm which is necessary for the three-year mandatory minimum to apply. *Dawkins v. State*, 923 So. 2d 520 (Fla. 2d DCA 2005); § 775.087(2)(a)1, Fla. Stat. (2001). The face of the record shows that appellant was in constructive, not actual, possession of the firearm. We reverse and remand for the trial court to strike the mandatory minimum term from the sentence imposed on the possession of a firearm by a convicted felon count. Resentencing is not required, and appellant need not be present for this ministerial sentence correction.

Reverse and remand with directions to strike the three-year firearm mandatory minimum.

WARNER, TAYLOR and HAZOURI, JJ., concur.

* * *

Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 01-13938 CF10A.

Miguel Flores, Arcadia, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.