

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

**GUSTAV PETER FINKEL,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D10-249

[January 26, 2011]

DAMOORGIAN, J.

Gustav Peter Finkel assigns error to his judgment and sentence for grand theft. Finkel was charged with the crimes of burglary of a dwelling (Count I) and grand theft of property and currency in excess of \$100,000.00 (Count II). After a jury trial, Finkel was found guilty of Count I, as charged, and petit theft, a lesser-included offense of the grand theft as charged in Count II. For reasons not entirely clear from the record, the judgment reflects that Finkel was found guilty of grand theft as to Count II. Moreover, the sentencing order imposed a sentence of 27.75 months imprisonment for each count, with each sentence to run concurrent with the other. Finkel argues that the judgment adjudicating him guilty of grand theft is fundamentally erroneous because the jury found him guilty of the petit theft, a second degree misdemeanor. See *Miller v. State*, 764 So. 2d 640, 645 (Fla. 1st DCA 2000). Moreover, the concurrent sentence of 27.75 months appended to what should have been the second degree misdemeanor count exceeds the maximum sentence of 60 days incarceration. See § 812.014(3)(a), Fla. Stat. (2009); § 775.082(4)(b), Fla. Stat. (2009). Therefore, the sentence is illegal. Rightfully so, the State concedes error.

Accordingly, we remand with directions to the trial court to correct the written judgment, so that it reflects the jury's verdict on Count II, finding Finkel guilty of petit theft. On remand, the trial court shall resentence Finkel on Count II to a sentence not to exceed the maximum permitted by law.

*Affirmed and Remanded to Correct Judgment and Sentence.*

POLEN and GERBER, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Dale C. Cohen, Judge; L.T. Case No. 09-12938 CF10A.

Carey Haughwout, Public Defender, and Ian Seldin, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

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