



See § 893.13(1)(c)(1). The subsequent written sentence, however, indicates a three-year minimum term of imprisonment. After filing a notice of appeal in this court, Mr. Thomas unsuccessfully moved the trial court to correct the sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), arguing that the failure to orally pronounce the three-year minimum term of imprisonment in his presence was reversible error. We agree and reverse and remand for resentencing such that the three-year minimum sentence can be announced in Mr. Thomas's presence.

"Because a motion to correct a sentencing error involves a pure issue of law, our standard of review is de novo." Burks v. State, 237 So. 3d 1060, 1062 (Fla. 3d DCA 2017) (quoting Brooks v. State, 199 So. 3d 974, 976 (Fla. 4th DCA 2016)). Here, there is no question that the trial court was required to impose a minimum term of three years' imprisonment. See § 893.13(1)(c)(1) (requiring a trial court to impose a sentence of a "minimum term of imprisonment of 3 calendar years" when a defendant has delivered cocaine within 1000 feet of a public park); State v. Crews, 884 So. 2d 1139, 1140 (Fla. 2d DCA 2004) (providing that the plain language of section 893.13(1)(c)(1) requires the trial court to impose a nondiscretionary minimum term of three calendar years).

The issue in this case arises because the trial court did not announce the mandatory minimum term of three years' imprisonment at sentencing but later added it to the written sentence outside of Mr. Thomas's presence. Mr. Thomas argues that due process required his presence when the minimum term was added to his sentence.

See Dunbar v. State, 89 So. 3d 901, 907 (Fla. 2012). We agree.

In Dunbar, the trial court orally pronounced a life sentence for robbery with a firearm but neglected to announce the ten-year mandatory minimum for the offense. 89 So. 3d at 903. That same day, the trial court entered a written sentencing order including the mandatory minimum term. Id. Our supreme court remanded for resentencing to impose the mandatory minimum term, reasoning that Mr. Dunbar "had a due process right to be present when the terms of his sentence were increased." Id. at 907. The Dunbar court explained that "a defendant is guaranteed the right to be present at any stage of [a] criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." Id. (quoting Kentucky v. Stincer, 482 U.S. 730, 745 (1987)). And because "a sentencing proceeding in which a sentence is increased is a critical stage of trial at which the defendant's presence 'would contribute to the fairness of the procedure,' " the court concluded that Mr. Dunbar was required to be present when the ten-year mandatory minimum was added to his life sentence. Id. (quoting Stincer, 482 U.S. at 745).

In denying the motion to correct sentencing error, the trial court first explained that it did not err when orally pronouncing Mr. Thomas's sentence because the aggregate seven-year sentence it pronounced at the sentencing hearing necessarily included the minimum three-year term of imprisonment required by section 893.13(1)(c)(1). Attempting to distinguish Dunbar, the trial court reasoned that unlike the statute at issue in Dunbar, section 893.13 does not prohibit a defendant from receiving any gain time during the mandatory portion of his sentence. See Mobley v. State, 263 So. 3d 117, 118 (Fla. 5th DCA 2018) (concluding that the legislature did not intend to prohibit gain time from being awarded during the three-year minimum term of

imprisonment that section 893.13(1)(c)(1) requires because the statute contains no such language). The State argues that the practical effect of this distinction is that unlike the defendant in Dunbar, Mr. Thomas's aggregate sentence was not increased when the trial court added the three-year minimum term of imprisonment on Mr. Thomas's written sentence. And because the duration of Mr. Thomas's sentence was not technically increased, the State asserts that there are no due process concerns that would necessitate transporting Mr. Thomas back into court so that the trial judge can orally pronounce the nondiscretionary minimum term of three years' imprisonment.

The trial court's rationale for denying the motion and the State's argument as it relates to the practical impact of reversing and remanding for a resentencing hearing echo Chief Justice Canady's dissent in Dunbar. He dissented from the part of the court's decision that remanded for a resentencing hearing requiring Mr. Dunbar's presence because "there is no way in which Dunbar's presence 'would contribute to the fairness of the procedure.'" Dunbar, 89 So. 3d at 908 (Canady, C.J., concurring in part and dissenting in part) (quoting Stincer, 482 U.S. at 745). Chief Justice Canady explained that Mr. Dunbar's presence at a resentencing hearing where the trial court would merely announce a nondiscretionary minimum term of imprisonment would be "a prime example of a situation 'when presence would be useless, or the benefit but a shadow.'" Id. (quoting Stincer, 482 U.S. at 745).

Although the same observation is appropriate here, we are bound by the rule that a defendant's due process rights are violated when a minimum term of imprisonment is added to a sentence without the defendant's presence. See Dunbar, 89 So. 3d at 907. Other districts have reached the same conclusion even when a

resentencing hearing requiring the defendant's presence would practically not change much. See, e.g., Solomon v. State, 254 So. 3d 1121, 1125 (Fla. 5th DCA 2018) (reversing and remanding for a resentencing hearing requiring the defendant's presence where the trial court will orally pronounce a ten-year minimum term of imprisonment although the defendant had already been incarcerated for more than ten years and had essentially served the sentence the trial court was ordered to orally pronounce in his presence).

Accordingly, we reverse Thomas's sentence and remand for a resentencing hearing for the trial court to orally pronounce the three-year minimum term of imprisonment it added to Mr. Thomas's written sentence outside of his presence. We affirm Thomas's conviction and sentence in all other respects.

Affirmed in part, reversed in part, and remanded with instructions.

MORRIS and SALARIO, JJ., Concur.