

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

RICHARD DEAN HETHERINGTON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D18-2539

Opinion filed April 24, 2020.

Appeal from the Circuit Court for  
Charlotte County; Donald H. Mason,  
Judge.

Howard L. Dimmig, II, Public Defender,  
and Jean Marie Henne, Special  
Assistant Public Defender, Bartow, for  
Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and C. Todd Chapman,  
Assistant Attorney General, Tampa, for  
Appellee.

PER CURIAM.

A jury convicted Richard Hetherington of burglary of a dwelling and petit theft. On this appeal from the judgment and sentence, Hetherington argues that the trial court erroneously adjudicated and sentenced him for grand theft and erred in denying

his motion to suppress statements and that his trial counsel was ineffective because she conceded to the jury his guilt of trespass.

We reject Hetherington's suppression argument without comment and affirm the judgment and sentence, but we remand for correction of a scrivener's error in the judgment. Hetherington was originally charged in count one with burglary of a dwelling, a second-degree felony, and in count two with grand theft, a third-degree felony. On the first day of trial, the State orally amended the charge in count two to petit theft, a second-degree misdemeanor. Hetherington was tried for petit theft and found guilty by a properly instructed jury. The sentencing scoresheet indicates that the offense of conviction was petit theft, and the trial court sentenced him to time served. The judgment, however, indicates that the jury found Hetherington guilty of felony grand theft. The State concedes that the judgment is in error.

As to Hetherington's claim that his counsel rendered ineffective assistance, we decline to consider this claim on direct appeal. See Corzo v. State, 806 So. 2d 642, 645 (Fla. 2d DCA 2002). Accordingly, we affirm the judgment and sentence for petit theft and remand for the trial court to correct the scrivener's error in the judgment. Hetherington does not have to be present for this ministerial act. See Devlin v. State, 224 So. 3d 803, 804 (Fla. 2d DCA 2017). Our affirmance is without prejudice to Hetherington's right to raise his ineffective-assistance claim in a timely and facially sufficient motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850.

Affirmed; remanded with directions.

SILBERMAN, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.