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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA, Appellant, v. BRANDON THOMAS WATLINGTON, Appellee.	)	Case No. 2D19-3366

Opinion filed October 23, 2020.

Appeal from the Circuit Court for Hillsborough County; Melissa M. Polo, Judge.

Ashley Moody, Attorney General, Tallahassee, and Laurie Benoit-Knox, Assistant Attorney General, Tampa, for Appellant.

Howard L. Dimmig, II, Public Defender, and Joanna Beth Conner, Assistant Public Defender, Bartow, for Appellee.

SILBERMAN, Judge.

The State seeks review of a youthful offender sentence that was imposed after Brandon Thomas Watlington entered an open plea to armed burglary of a dwelling with an assault or battery, attempted robbery, and conspiracy to commit armed burglary of a dwelling with an assault or battery. The State argues that Watlington's youthful

offender sentence is illegal because the burglary charge was enhanced to a life felony. We agree and reverse.

Armed burglary of a dwelling with assault or battery is a first-degree felony. See § 810.02(1)(b), (2)(a), (2)(b), Fla. Stat. (2017). The offense was reclassified under what is commonly called the 10-20-Life statute[1] and charged as a life felony based on allegations that Watlington "carried, displayed, used, threatened to use, or attempted to use" a firearm during the burglary. See § 775.087(1)(a), Fla. Stat. (2017). And the offense was subject to a twenty-five-year mandatory minimum under the 10-20-Life statute based on the allegation that Watlington discharged a firearm causing great bodily harm. See § 775.087(2)(a)(1)(d), (2)(a)(3).

Watlington entered an open plea of guilty to the burglary offense as charged. Both parties agreed that Watlington, who was nineteen years old when the offense took place, qualified for discretionary youthful offender sentencing pursuant to section 958.04(1), Florida Statutes (2017). Defense counsel requested a youthful offender sentence, but the State argued that the court should impose adult sanctions based on the fact that Watlington shot the victim in the face. The court sentenced Watlington as a youthful offender to four years in prison followed by two years of probation. See § 958.04(2).

On appeal, the State now argues that Watlington's youthful offender sentence is illegal because the burglary charge was enhanced to a life felony. The State asserts that the trial court was required to impose the twenty-five-year mandatory minimum sentence under the 10-20-Life statute. Watlington argues that the State failed

[1]Mendenhall v. State, 48 So. 3d 740, 746 (Fla. 2010).

to preserve this issue for review because it did not make this argument to the trial court and, in fact, erroneously assured the court that it had the discretion to impose a youthful offender sentence.

We are not persuaded by Watlington's argument. The imposition of an illegal sentence constitutes fundamental error which the State may raise for the first time on appeal. See State v. Ingram, 299 So. 3d 546, 547 n.1 (Fla. 5th DCA 2020); State v. Kremer, 114 So. 3d 420, 421 (Fla. 5th DCA 2013); State v. Valera, 75 So. 3d 330, 332 (Fla. 4th DCA 2011). And a sentence that is shorter than the requisite mandatory minimum sentence constitutes an illegal sentence. State v. Moran, 45 Fla. L. Weekly D646, D647 (Fla. 2d DCA Mar. 20, 2020); State v. Strazdins, 890 So. 2d 334, 335 (Fla. 2d DCA 2004); Ingram, 299 So. 3d at 547 n.1. The trial court lacks the authority to impose an illegal sentence regardless of the parties' positions on the matter. Williams v. State, 500 So. 2d 501, 503 (Fla. 1986) (holding that the court could not impose an illegal sentence as part of a plea bargain), receded from on other grounds by Quarterman v. State, 527 So. 2d 1380 (Fla. 1988); Filppula v. State, 133 So. 3d 1232, 1234 (Fla. 2d DCA 2014) (holding that the court could not impose an illegal sentence at a resentencing even though defense counsel agreed the sentence was legal).

Section 958.04(2) provides for youthful offender sentencing for a qualifying defendant "[i]n lieu of other criminal penalties authorized by law." But the Florida Youthful Offender Act expressly precludes youthful offender sentencing for any "person who has been found guilty of a capital or life felony." § 958.04(1)(c). This prohibition includes felonies that have been enhanced to life felonies under section 775.087(1)(a). See State v. Malone, 50 So. 3d 60, 61 (Fla. 2d DCA 2010); Beatrice v.

State, 832 So. 2d 972, 973 (Fla. 4th DCA 2003) (on rehearing). We decline Watlington's invitation to revisit our decision in Malone and apply the reasoning set forth by Judge Gunther in her dissent in Beatrice. See 832 So. 2d at 973-74 (Gunther, J., dissenting).

Accordingly, we reverse Watlington's youthful offender sentence and remand for further proceedings which include providing Watlington an opportunity to withdraw his plea. See Malone, 50 So. 3d at 61-62.

Reversed and remanded.

CASANUEVA and BLACK, JJ., Concur.