

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JOHN THOMAS PETTERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D19-769

June 25, 2021

Appeal from the Circuit Court for Lee County; James R. Thompson,
Judge.

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

Ashley Moody, Attorney General, Tallahassee, and Elba Caridad
Martin, Assistant Attorney General, Tampa, for Appellee.

SLEET, Judge.

John Petterson challenges his convictions and sentences for
burglary with assault or battery and misdemeanor battery. We find
no merit to his argument on appeal that the trial court abused its

discretion in denying his request for a downward departure sentence, and we affirm his convictions and sentences without further comment. However, we remand for the correction of scrivener's errors in the judgment and sentences.

Petterson's original judgment and sentences were entered on January 17, 2019, and reflected that Petterson was sentenced to five years and fifteen days' prison on the felony in count one instead of the orally pronounced sentence of five years and six months. The original judgment and sentences also incorrectly noted that the trial court reserved jurisdiction as to further prosecution costs, a request by the State which the transcript reflects was denied by the trial court. However, that judgment correctly reflected the trial court's oral imposition of a \$50 public defender application fee pursuant to section 27.52, Florida Statutes (2019).

On February 6, 2019, the trial court entered corrected judgment and sentences, amending the length of Petterson's sentence in count one to conform with the court's oral pronouncement of five years and six months. However, the court failed to delete the reservation on prosecution costs and increased the \$50 public defender application fee to \$100.

Petterson raised these errors in a Florida Rule of Criminal Procedure 3.800(b)(2) motion filed on March 16, 2020, and the trial court granted the motion on June 2, 2020, and entered an amended judgment on June 9, 2020. However, pursuant to rule 3.800(b)(2)(B), "if the trial court does not file an order ruling on [such a] motion within [sixty] days, the motion shall be deemed denied." As such, the June 2, 2020, order granting Petterson's motion and the June 9, 2020, amended judgment and sentences are nullities. *See Pearce v. State*, 968 So. 2d 92, 94 (Fla. 2d DCA 2007) ("Because the circuit court did not file an order ruling on the motion within the sixty-day time period, its jurisdiction to correct the error terminated on January 19, 2007. Thus the January 25 order granting Mr. Pearce's motion [and the subsequent restitution orders] are nullities."); *see also Grable v. State*, 37 So. 3d 989, 990 (Fla. 2d DCA 2010) ("Although the trial court eventually granted the motion and amended Grable's sentence, it did so beyond the sixty-day time period set forth in rule 3.800(b)(2)(B). Therefore, Grable's motion is deemed denied and the amended sentence is a nullity."); *Jackson v. State*, 793 So. 2d 117, 118 (Fla. 2d DCA 2001) ("Although the trial court's untimely order properly granted relief on

some of the sentencing errors raised in [appellant's] motion, that order is a nullity because it was untimely entered.").

Because the trial court's attempt to correct these scrivener's errors was untimely and thus a nullity, we remand for entry of corrected judgment and sentences consistent with this opinion. We affirm Petterson's convictions and sentences in all other respects.

Affirmed in part, reversed in part, and remanded.

NORTHCUTT and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.