

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JESUS CABRERA-TOLEDO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D19-881

June 11, 2021

Appeal from the Circuit Court for Lee County; Mark Steinbeck,
Senior Judge.

Howard L. Dimmig, II, Public Defender, and Ama N. Appiah, Special
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Katherine
Coombs Cline, Assistant Attorney General, Tampa, for Appellee.

ATKINSON, Judge.

Jesus Cabrera-Toledo appeals his judgment and sentence for
battery and attempted unlawful sexual activity. We affirm the

judgment and sentence imposed without comment. However, because the written sentence differed from the trial court's oral pronouncement of the sentence, we reverse and remand for entry of a corrected written sentence.

Following a jury trial, Cabrera-Toledo was found guilty of battery and attempted unlawful sexual activity. At the sentencing hearing, the trial court sentenced Cabrera-Toledo to 364 days in jail for battery and 4 years of imprisonment followed by 1 year of sex offender probation for attempted unlawful sexual activity with credit for 611 days of time served. The trial court stated in its oral pronouncement that the terms of imprisonment for the two counts would be served concurrently. Subsequently, the trial court entered a written judgment and sentence. The written sentence matched the trial court's oral pronouncement except that it did not specify that Cabrera-Toledo's sentences for battery and attempted unlawful sexual activity were to be served concurrently.¹ Cabrera-Toledo

¹ Cabrera-Toledo also points out that the written order of sex offender probation does not reflect the sentence for the battery charge. However, the order of sex offender probation is consistent with the trial court's oral pronouncement of the sentence because the trial court did not sentence Cabrera-Toledo to sex offender probation for the simple battery charge. As such, the order of sex

filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800. The trial court did not rule on the motion within sixty days; therefore, the motion is deemed denied. See Fla. R. Crim. P. 3.800(b)(2)(B).

"A trial court's written sentence must conform to its oral pronouncement; when the two differ, that constitutes reversible error." *Gay v. State*, 193 So. 3d 1069, 1070 (Fla. 2d DCA 2016) (citing *Rivera v. State*, 34 So. 3d 207, 208 (Fla. 2d DCA 2010)). Because the trial court's oral pronouncement differs from the written sentence as to whether Cabrera-Toledo's sentences run concurrently, we reverse and remand for the trial court to amend the written sentence to conform to its oral pronouncement of the sentence. See *id.* In all other respects, we affirm.

Affirmed in part, reversed in part, and remanded.

SILBERMAN and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.

offender probation does not need to be corrected to reflect that the sentences for the battery and unlawful sexual activity charges were to be served concurrently.