DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RONALD STEPHEN DENMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Nos. 2D19-1687, 2D19-3381
CONSOLIDATED

October 15, 2021

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

Howard L. Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellant.

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

SLEET, Judge.

Ronald Denman challenges his judgment and sentences for burglary of a conveyance and petit theft, third or subsequent

offense.[1] We affirm Denman's convictions and consecutive five-year sentences but reverse the imposition of a $400 public defender fee and the habitual felony offender (HFO) designation that was not orally pronounced at sentencing.

Denman argues, and the State concedes, that the trial court erred in imposing a $400 public defender fee without giving him notice and an opportunity to challenge it. *See* § 938.29(5), Fla. Stat. (2019) ("The court having jurisdiction of the defendant . . . shall . . . determine the value of the services of the public defender . . . at which time the defendant . . . , after adequate notice thereof, shall have opportunity to be heard and offer objection to the determination . . . ."); *State v. J.A.R.*, 318 So. 3d 1256, 1258-59 (Fla. 2021) ("[I]f the court exercises its discretion under the statute to impose a fee amount higher than the [$100] statutory minimum [for felonies], there must be 'sufficient proof of higher fees or costs incurred' . . . [and] it must notify the defendant of the fee as well as the right to contest it." (quoting § 938.29(1)(a))). We agree, reverse the imposition of this fee, and remand for "the trial court to either

[1] This court has sua sponte consolidated these appeals for all purposes.

reduce the amount to the statutorily required $100 or hold a hearing with proper notice to obtain evidence in support of a lien in an amount greater than the statutory minimum." *See Pierre v. State*, 264 So. 3d 206, 207 (Fla. 4th DCA 2019).

Denman also argues on appeal that his written sentence does not comport with the trial court's oral pronouncement at sentencing. He maintains that while the court determined that he did qualify as a an HFO, it affirmatively stated that it would not impose the designation. Our review of the sentencing transcript indicates that Denman is correct. As such, on remand, the trial court shall also strike the HFO designation from the sentence so that the written sentence comports with the court's oral pronouncement. *See Cuevas v. State*, 135 So. 3d 449, 449 (Fla. 2d DCA 2014) ("[A] trial court's oral pronouncement of sentence controls over the written document." (citing *Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003))).

Finally, after Denman filed his notice of appeal in case number 2D19-1687, the trial court sua sponte amended Denman's sentence, correcting a scrivener's error that indicated his sentences were to be served concurrently rather than consecutively as orally

pronounced by the court. However, because Denman had already filed his notice of appeal, the trial court lacked jurisdiction to amend his sentence. *See Caruso v. State*, 264 So. 3d 361, 362 (Fla. 2d DCA 2019) ("The trial court . . . lacked jurisdiction to amend the judgment and sentence while it was on appeal to this court."). Accordingly, on remand, the amended sentence entered without jurisdiction must be vacated, *see id.*, but with its jurisdiction restored, the trial court must then correct Denman's sentence to reflect its oral sentencing pronouncement that the terms be served consecutively, *see Cuevas*, 135 So. 3d at 449.

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

NORTHCUTT and KHOUZAM, JJ., Concur.

Opinion subject to revision prior to official publication.