

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANGEL A. ANDUJAR-RUIZ,)	
)	
Appellant,)	
)	
v.)	Case No. 2D19-3655
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed April 9, 2021.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
For Hillsborough County; Laura E.
Ward, Judge.

Angel A. Andujar-Ruiz, pro se.

Ashley Moody, Attorney General, and
Linsey Sims-Bohnenstiehl, Assistant
Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Angel A. Andujar-Ruiz appeals the order denying his petition for writ of habeas corpus, and his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800. As we explain below, Mr. Andujar-Ruiz completed his misdemeanor sentences. Thus, his challenge to the denial of his rule 3.800 motion is moot. See Raines v. State, 14 So. 3d 244, 246 (Fla. 2d DCA 2009) ("[A] sentence

cannot be challenged after it has been fully served and has expired because any sentencing issue is moot thereafter." (citing Miller v. State, 996 So. 2d 954 (Fla. 1st DCA 2008))). Further, because his petition for habeas corpus, which contains an oath, seeks to collaterally attack his misdemeanor convictions, we treat Mr. Andujar-Ruiz's petition as a timely filed postconviction motion under rule 3.850. See Fla. R. Crim. P. 3.850; see, e.g., Bixler v. State, 971 So. 2d 934, 935 (Fla. 2d DCA 2007) (concluding that a habeas corpus petition challenging defendant's conviction and sentence should have been treated as a motion for postconviction relief). Mr. Andujar-Ruiz contends that the circuit court lacked subject matter jurisdiction over his two misdemeanors. We dismiss the appeal as to the illegal sentence motion; we reverse the denial of his rule 3.850 motion and vacate the misdemeanor convictions.

The State charged Mr. Andujar-Ruiz with one felony count of battery (second or subsequent offense) and two unrelated misdemeanors. The circuit court granted Mr. Andujar-Ruiz's pretrial motion to dismiss the felony count. Mr. Andujar-Ruiz then pleaded guilty to the misdemeanor offenses; the circuit court sentenced him to time served. His illegal sentence claim, hence, is moot.

Mr. Andujar-Ruiz argues that the circuit court lacked jurisdiction to adjudicate him guilty of the misdemeanors because the felony charge had been dismissed. We agree.

Jurisdiction cannot be conferred or waived by consent. See Ingraham v. State, 122 So. 3d 934, 935 (Fla. 2d DCA 2013). Mr. Andujar-Ruiz's plea is irrelevant. Article V, section 20(c)(3) of the Florida Constitution, and section 26.012(2)(d), Florida Statutes (2018), provide that all circuit courts shall have jurisdiction over "all felonies

and of all misdemeanors arising out of the same circumstances as a felony which is also charged."

When the circuit court dismissed the battery charge, Mr. Andujar-Ruiz no longer faced a felony charge. Consequently, the circuit court could not adjudicate the unrelated misdemeanors. See Hawkins v. State, 579 So. 2d 334, 335 (Fla. 2d DCA 1991) (holding that when "the court granted Hawkins' motion to dismiss the felony count the circuit court no longer had jurisdiction over the misdemeanor count"); see also Oglesby v. State, 911 So. 2d 1288, 1288 (Fla. 1st DCA 2005) ("The circuit court was divested of jurisdiction when the information was amended and all that remained to be tried by the court were two misdemeanors."); Glass v. State, 832 So. 2d 837, 838 (Fla. 5th DCA 2002) (holding that the trial court lacked jurisdiction to try defendant where information had been amended to charge defendant with two misdemeanors and no felonies).¹

The county court was the proper forum in which to resolve Mr. Andujar-Ruiz's misdemeanor offenses following the dismissal of the felony battery charge. The circuit court lacked jurisdiction. Accordingly, we reverse the denial of his rule 3.850 motion and vacate Mr. Andujar-Ruiz's misdemeanor convictions. See Barlow v. State, 171 So. 3d 777, 778 (Fla. 2d DCA 2015).

¹The State posits that the circuit court maintained jurisdiction pursuant to Woodbury v. State, 110 So. 3d 17 (Fla. 2d DCA 2013). We find that case distinguishable. Unlike Woodbury, 110 So. 3d at 18-19, Mr. Andujar-Ruiz's remaining misdemeanor charges were not lesser included offenses of the dismissed felony charge. Further, this court's decision in Woodbury, 110 So. 3d at 19, was based on the limited holding in Madison v. State, 540 So. 2d 189, 190 (Fla. 1st DCA 1989), that the circuit court could maintain jurisdiction over an underlying misdemeanor DUI after the felony DUI was dismissed.

Rule 3.800(a) appeal dismissed; order denying rule 3.850 motion reversed; misdemeanor convictions vacated.

VILLANTI and LUCAS, JJ., Concur.