DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CLARENCE EDMONDS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-448

April 27, 2022

Appeal from the Circuit Court for DeSoto County; Don T. Hall, Judge.

Howard L. Dimmig, II, Public Defender; and Terrence E. Kehoe, Special Assistant Public Defender, Bartow, for Appellant.

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

LABRIT, Judge.

Clarence Edmonds appeals his judgment and sentences for multiple counts of sexual battery by physical force (counts one through four), kidnapping (count five), burglary of a dwelling with

assault or battery (count six), and simple battery—as a lesser included offense of the charged crime of domestic battery by strangulation (count seven). We affirm without comment Mr. Edmonds' judgment in its entirety and his sentences as to counts one through six. However, the trial court's oral pronouncement of Mr. Edmonds' sentence was insufficient with respect to count seven (simple battery). Therefore, we reverse and remand for a clearer pronouncement and written order on Mr. Edmonds' sentence for the simple battery count in count seven. Mr. Edmonds has preserved this error by raising it in a timely filed motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

Background

After a three-day jury trial, Mr. Edmonds was found guilty as charged on counts one through six and guilty of the lesser included offense of simple battery on count seven. At the conclusion of the sentencing hearing, the trial court orally pronounced concurrent life sentences for all of Mr. Edmonds' charges that were punishable by life—i.e., counts one through six. The trial court did not specifically mention Mr. Edmonds' sentence as to count seven, the simple battery conviction.

The written sentence ordered Mr. Edmonds to serve concurrent life sentences on counts one through six and a sentence of eleven months and twenty-nine days on count seven, with credit on all counts for 368 days' time served. The sentence for count seven also specified that Mr. Edmonds was committed to the custody of the Sheriff of DeSoto County. The trial court issued an Order of Commitment to County Jail, directing that Mr. Edmonds be committed to the DeSoto County jail "for a period of life with credit for time served of TBD days."

In his rule 3.800(b)(2) motion, Mr. Edmonds challenged various fines, costs, and fees imposed against him and he sought to correct the commitment order for count seven. Mr. Edmonds asserted that the life sentence should be vacated because it was "clearly not the sentence of the court" and further argued that because of the credit for time served, his sentence had already been completed.

The postconviction court's order resolved the monetary concerns and acknowledged that life commitment to county jail on the simple battery count was erroneous. Although these points were not raised in Mr. Edmonds' rule 3.800(b)(2) motion, the

postconviction court also ordered correction of "two other related errors." First, the court directed the clerk to amend the judgment on count seven to correctly reflect Mr. Edmonds' conviction for simple battery.[1] Second, it directed the clerk to amend the sentence for that count to life in prison.

Mr. Edmonds moved for rehearing, arguing that rule 3.800(b)(2) did not authorize the postconviction court to change his sentence on count seven from eleven months and twenty-nine days in jail to life in prison. Additionally, Mr. Edmonds argued that the new life sentence on the simple battery count exceeds the statutory maximum. The motion for rehearing was deemed denied because the trial court failed to file an order within forty days. *See* Fla. R. Crim. P. 3.800(b)(2)(B).

Discussion

Mr. Edmonds argues that his life sentence for simple battery on count seven must be corrected, and the State appropriately concedes error on this point. As Mr. Edmonds explains, the trial court did not mention count seven in its oral pronouncement, but

[1] The judgment incorrectly stated that Mr. Edmonds was adjudicated guilty of domestic battery by strangulation.

the written sentence on that count was clear—he was to serve eleven months and twenty-nine days in jail. We agree.

A proper sentence is governed by the intent of the trial court. *See Jackson v. State*, 615 So. 2d 850, 851 (Fla. 2d DCA 1993). When the transcript and record establish what the trial court intended a sentence to be, yet "the trial court's oral pronouncement of sentence did not make plain this intention," we have reversed and remanded for the trial court to provide a clearer pronouncement and written order. *See id.* From this record, the trial court apparently intended Mr. Edmonds to receive a sentence of eleven months and twenty-nine days on his simple battery conviction, with credit for time served. The trial court did not intend to impose a life sentence for the simple battery conviction, nor could it lawfully have done so.[2]

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[2] Although the postconviction court concluded otherwise, Mr. Edmonds' sentence points do not authorize imposition of a life sentence for his simple battery conviction under the Criminal Punishment Code. The Criminal Punishment Code does not apply to the simple battery charge because simple battery is a misdemeanor. *See Singleton v. State*, 554 So. 2d 1162, 1163–64 (Fla. 1990) (explaining that neither the sentencing guidelines nor the Criminal Punishment Code apply to misdemeanors).

We reverse and remand for a clearer pronouncement and written order as to Mr. Edmonds' sentence for count seven. Our decision renders moot the erroneous commitment order and the portions of the postconviction court's order amending Mr. Edmond's sentence for count seven because those orders are premised on the original sentence for count seven. *See Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). We affirm the judgment and sentences in all other respects.

Affirmed in part; reversed in part; remanded for further proceedings.

KELLY and VILLANTI, JJ., Concur.

Opinion subject to revision prior to official publication.