DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

WILLIE MILES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-1519

June 10, 2022

Appeal from the Circuit Court for Lee County; Robert J. Branning, Judge.

Dane K. Chase of Chase Law Florida, P.A., St. Petersburg, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Chris Phillips, Assistant Attorney General, Tampa; and William C. Shelhart, Assistant Attorney General, Tampa (substituted as counsel of record), for Appellee.

LaROSE, Judge.

Willie Miles appeals the more severe sentence imposed following his successful postconviction challenge to his original

sentence. He claims that the postconviction court impermissibly increased his sentence, not only because he had already begun serving the original sentence, but because the original sentence had been final for over a dozen years.

He contends that his new sentence offends the "reasonable expectation of finality" he had in his original sentence and, therefore, violates double jeopardy. *See* amend. V, U.S. Const. ("No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb . . . ."); art. I, § 9, Fla. Const. ("No person shall . . . be twice put in jeopardy for the same offense . . . ."). We have jurisdiction. *See* Fla. R. App. P. 9.030(b)(1)(A). We affirm Mr. Miles' new sentence.

Background

Mr. Miles discharged a firearm into a restaurant's crowded parking lot. A bullet struck the victim in the leg. In 2005, a jury found Mr. Miles guilty as charged of aggravated battery with a firearm causing great bodily harm.

At the 2005 sentencing hearing, Mr. Miles requested a youthful offender sentence.[1] The State advised the trial court that, in charging Mr. Miles, it had "invoked the 10-20-Life statute." *See* § 775.087(2)(a)1.g, 3, Fla. Stat. (2004). Therefore, the State asked the trial court to "follow the firearm statute . . . and impose a 25-year [mandatory minimum sentence]."

After hearing from Mr. Miles' mother and the victim, the trial court pronounced sentence: "[P]ursuant to Florida Statute in this regard I -- the Court has no alternative other then [sic] to sentence you to 25 years in the State prison." The trial court's orally pronounced sentence did not include a mandatory minimum term, but the written sentence did. We affirmed the judgment and sentence on direct appeal. *See Miles v. State*, 962 So. 2d 910 (Fla. 2d DCA 2007) (table decision). Our mandate issued August 29, 2007.

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[1] Mr. Miles was twenty years old at the time of the offense, and despite being over twenty-one years of age at sentencing, he qualified for a youthful offender disposition. *See* § 958.04(1)(b), Fla. Stat. (2004). *But see* ch. 08-250, § 7, Laws of Fla. (removing the statutory language that to qualify for a youthful offender sentence the crime must have been committed before the defendant's twenty-first birthday, and instead requiring that "the offender [be] younger than [twenty-one] years of age at the time sentence is imposed").

In October 2019, Mr. Miles filed a motion to correct an illegal sentence. *See* Fla. R. Crim. P. 3.800(a). He argued that his written sentence is illegal because it does not comport with the trial court's oral pronouncement. The State conceded error. Following an April 2021 resentencing hearing, the postconviction court orally pronounced the twenty-five-year mandatory minimum term and entered a conforming written sentence.

On appeal, Mr. Miles claims that he possessed "a reasonable expectation of finality in the [2005] sentence . . . and, as such, the circuit court was without the lawful authority to increase his sentence by adding a 25[-]year mandatory minimum sentence nearly 16 years later." He claims that his new sentence violates double jeopardy.

Analysis

I. Mr. Miles' Original Sentences-Oral versus Written

In Florida, "a court's oral pronouncement of a sentence controls over the written sentencing document." *Williams v. State*, 957 So. 2d 600, 603 (Fla. 2007); *accord Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003) (recognizing the "longstanding principle of law-that a court's oral pronouncement of sentence controls over the

written document"); *Bryant v. State*, 301 So. 3d 352, 353 (Fla. 2d DCA 2020) ("When a conflict exists between the trial court's oral pronouncement of sentence and the written sentencing documents, the oral pronouncement controls."). That is because "[a] written sentence is merely a record that must conform to the orally pronounced sentence." *Hutto v. State*, 232 So. 3d 528, 529 (Fla. 1st DCA 2017) (citing *Justice v. State*, 674 So. 2d 123, 125 (Fla. 1996)). At first blush, the trial court's oral pronouncement of a straight twenty-five-year sentence controls over the written sentence reflecting a twenty-five-year mandatory minimum.

Mr. Miles' rule 3.800(a) motion was an appropriate vehicle to challenge the discrepancy between the oral and written sentences. *See Williams*, 957 So. 2d at 603 ("[A] motion alleging a discrepancy between the oral and written sentences should be cognizable in a rule 3.800(a) proceeding."); *King v. State*, 86 So. 3d 1247, 1248 (Fla. 2d DCA 2012) ("The discrepancy between the oral pronouncement and written sentence is a valid basis for an illegal sentence claim under rule 3.800(a)." (citing *Williams*, 957 So. 2d at 605)); *cf. Levandoski v. State*, 245 So. 3d 643, 647 n.6 (Fla. 2018) ("[A] defendant can at any time assert a claim in a 3.800(a) motion that

the written sentencing order was more severe than the oral sentence . . . ."). The postconviction court properly granted Mr. Miles' motion, but that is not the end of the story.

II. The Orally Pronounced 2005 Sentence was Illegal

"[A] sentence is 'illegal' if it 'imposes a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances . . . .' " *Carter v. State*, 786 So. 2d 1173, 1181 (Fla. 2001) (quoting *Blakley v. State,* 746 So. 2d 1182, 1187 (Fla. 4th DCA 1999)).

A sentence that is shorter than the requisite mandatory minimum sentence is an illegal sentence. *State v. Watlington*, 305 So. 3d 774, 775 (Fla. 2d DCA 2020) (first citing *State v. Moran*, 310 So. 3d 972, 974 (Fla. 2d DCA 2020); then citing *State v. Strazdins*, 890 So. 2d 334, 335 (Fla. 2d DCA 2004); and then citing *State v. Ingram*, 299 So. 3d 546, 547 n.1 (Fla. 5th DCA 2020)); *State v. Kremer*, 114 So. 3d 420, 421 (Fla. 5th DCA 2013) ("[A] sentence is illegal when it is shorter than the required mandatory minimum sentence." (citing *Strazdins*, 890 So. 2d at 335)); *see*, *e.g.*, *State v. Scanes*, 973 So. 2d 659, 661 (Fla. 3d DCA 2008) (recognizing that three-year mandatory minimum sentence imposed on kidnapping

charge was illegal, as the trial court was required to impose a ten-year mandatory minimum sentence).

Mr. Miles was convicted of an offense for which the trial court had to impose a twenty-five-year mandatory minimum sentence. There was no wiggle room. *See* § 775.087(2)(a)3 ("Any person who is convicted of [aggravated battery] and during the course of the commission of the felony such person discharged a 'firearm' . . . and, as the result of the discharge . . . great bodily harm was inflicted upon any person, the convicted person *shall be sentenced to a minimum term of imprisonment of not less than 25 years* . . . ." (emphasis added)); *see also Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008) ("The word 'shall' is mandatory in nature."); *cf.* § 27.366(1), Fla. Stat. (2004) ("It is the intent of the Legislature that convicted criminal offenders who meet the criteria in [section] 775.087(2) . . . be sentenced to the minimum mandatory prison terms provided herein. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life."). The trial court's

failure to specify that the twenty-five-year term was a mandatory minimum sentence rendered the orally pronounced sentence illegal.

III. Double Jeopardy & Illegal Sentences

Before the postconviction court, the State conceded that Mr. Miles' rule 3.800(a) motion was well-taken. However, the parties disputed the appropriate remedy.

Mr. Miles claimed entitlement to the orally pronounced twenty-five-year term. He asked that the mandatory minimum provision simply be stricken from the written sentence. He acknowledged that under *Dunbar v. State*, 89 So. 3d 901, 906-07 (Fla. 2012), double jeopardy is not violated when the trial court simply adds nondiscretionary mandatory minimum terms to a written sentence after the sentencing hearing because the defendant does not have a legitimate expectation of finality in an illegal sentence. *Id.* (holding that "the trial court did not violate double jeopardy principles in adding" a "nondiscretionary mandatory minimum term" later that same day in its written sentencing order after the sentencing hearing was over and "without the parties present" because, by not including the term in its oral

pronouncement, "[t]he trial court initially pronounced a sentence it had no discretion to impose").

As in *Dunbar*, the trial court in Mr. Miles' case originally imposed a sentence it could not otherwise impose. *See id.* at 906 n.5 ("These facts are distinguishable from those prompting the general rule we announced in *Ashley*[, 850 So. 2d at 1267], that a sentence may not be increased after service has begun without violating double jeopardy protections. Unlike the initial sentence in *Dunbar*[*v. State*, 46 So. 3d 81 (Fla. 5th DCA 2010)], which the trial court had no discretion to impose, the initial sentence in *Ashley* was valid.").

However, Mr. Miles argues that the passage of time between sentencings augurs in his favor. Mr. Dunbar litigated the legality of his sentence through the direct appeal process. In contrast, Mr. Miles' judgment and sentence became final in August 2007. *Miles*, 962 So. 2d 910; *see O'Neill v. State*, 6 So. 3d 630, 630 (Fla. 2d DCA 2009) (holding that a judgment and sentence become final when direct appeal proceedings are concluded). Thereafter, he availed himself of the postconviction process.

According to Mr. Miles, the passage of time creates a reasonable and vested expectation of finality in the originally imposed illegal sentence. He relies upon the *Dunbar* court's statement that "[w]hen a trial court fails to pronounce nondiscretionary sentencing terms, the defendant has no legitimate expectation in the finality of that sentence, *at least until the reviewing court has issued a mandate or the time for filing an appeal has run.*" *Id.* at 906 (emphasis added). Mr. Miles observes that more than twelve years have passed since we affirmed his direct appeal. Accordingly, Mr. Miles maintains that adding a more onerous term to his sentence violates double jeopardy principles.

Because Mr. Miles' original 2005 orally pronounced sentence was illegal, jeopardy was not implicated. *See Kelsey v. State*, 206 So. 3d 5, 11 (Fla. 2016) ("In 2012, we clarified that jeopardy attaches only to a legal sentence." (citing *Dunbar*, 89 So. 3d at 905)); *Plute v. State*, 835 So. 2d 368, 369 (Fla. 2d DCA 2003) ("It is well established that a harsher sentence may be imposed on resentencing [where the defendant's original sentence is illegal] without violating double jeopardy."); *State v. Swider*, 799 So. 2d 388, 391 (Fla. 4th DCA 2001) ("A trial court may vacate an illegal

sentence and impose a harsher sentence without violating the defendant's double jeopardy rights."). Therefore, because "jeopardy has never attached, there can be, as a matter of law, no double jeopardy." *Stauderman v. State*, 261 So. 3d 649, 652 (Fla. 2d DCA 2018). Whether Mr. Miles' sentence was amended later that same day following oral pronouncement, as in *Dunbar*, or more than twelve years later, the passage of time does not alter the calculus. An illegal sentence was, is, and remains illegal until it is corrected. Mr. Miles' subjective expectations of finality do not alter this fact.[2] *See, e.g.*, *Allen v. State*, 853 So. 2d 533, 534 (Fla. 5th DCA 2003) (affirming trial court's modification of sentence from three-year minimum mandatory sentence to ten-year minimum mandatory

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[2] We disregard the language Mr. Miles relies upon from *Dunbar* as mere dicta. *See Pedroza v. State*, 291 So. 3d 541, 547 (Fla. 2020) ("Any statement of law in a judicial opinion that is not a holding is dictum." (citing *State v. Yule*, 905 So. 2d 251, 259 n.10 (Fla. 2d DCA 2005) (Canady, J., specially concurring))); *Lewis v. State*, 34 So. 3d 183, 186 (Fla. 1st DCA 2010) ("When a court makes a pronouncement of law that is ultimately immaterial to the outcome of the case, it cannot be said to be part of the holding in the case. . . . Consequently, in the context of the instant case, the statements are *dicta* and not binding on this court."). This is especially so considering the court's subsequent statement that *Dunbar* "clarified that jeopardy attaches only to a legal sentence." *Kelsey*, 206 So. 3d at 11 (citing *Dunbar*, 89 So. 3d at 905).

sentence where sentencing statute required imposition of ten-year minimum mandatory sentence, and therefore, three-year minimum mandatory sentence was illegal).

One final, but not insignificant, point bears mention. The record in this case suggests Mr. Miles sought to exploit an oversight by the trial court at sentencing to avoid the obligatory mandatory minimum term. The 2005 sentencing hearing transcript reflects that the State repeatedly requested that the trial court sentence Mr. Miles to the statutorily mandated mandatory minimum twenty-five-year term. The trial court even acknowledged that it had "no alternative" under section 775.087(2). However, for whatever reason, the trial court failed to specifically articulate that the twenty-five-year term was a mandatory minimum. In this context, we cannot avoid the conclusion that the trial court's failure to do so was a mere oversight. *Cf. United States v. DiFrancesco*, 449 U.S. 117, 135 (1980) ("The Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner." (quoting *Bozza v. United States*, 330 U.S. 160, 166-67 (1947))).

Conclusion

We affirm Mr. Miles' sentence.

Affirmed.

MORRIS, C.J., and BLACK, J., Concur.

Opinion subject to revision prior to official publication.